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TREATIES AND OTHER INTERNATIONAL ACTS
OF THE UNITED STATES OF AMERICA

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TREATIES

AND OTHER

INTERNATIONAL ACTS OF THE UNITED STATES OF AMERICA

EDITED BY

HUNTER MILLER

VOLUME 5

DOCUMENTS 122–150 : 1846–1852
DOCUMENT 151 : 1799

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PREFACE

The scheme of this work as a whole is fully described in volume 1. It may be said here that the arrangement of the documents is chronological according to date of signature; each document has a serial number, but the numbers are merely for convenience and have no other significance. All international acts of the United States which have gone into force are in general included, whether now in force or not; but postal conventions and treaties with Indian tribes are not included. Extrinsic and related papers which are referred to in the documents proper are also printed, so far as possible.

The headnote to each document gives the relevant dates; the notes which follow each document are mainly textual and procedural but treat to some extent of the diplomatic history of the document.

As the document volumes are to be globally indexed, there is no separate index for this volume.

The print of the documents and of the quotations in the notes is literal and thus includes any peculiarities and even any errors of the original. Certain texts are reproduced in facsimile.

This volume contains thirty documents of the treaty edition, numbered 122 to 151, inclusive. The period covered by Documents 122 to 150 is from 1846 to 1852. The final document in the volume (Document 151) is an agreement with the Netherlands (Batavian Republic), effected by an exchange of notes of December 7 and 12, 1799, for the settlement of the claim of an American citizen in the case of the schooner *Wilmington Packet;* in its proper chronological order Document 151 should have been printed in volume 2; but the notes of 1799 were not observed when that volume was in course of preparation.

A facsimile reproduction of the example of Disturnell's Map (see pp. 340–70) which was added to the American original of the Treaty of Guadalupe Hidalgo (Document 129), is contained in a pocket inside the back cover of this volume.

H. M.

SEPTEMBER 19, 1936.

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GREAT BRITAIN : JUNE 15, 1846

The Oregon Treaty. Treaty Establishing the Boundary in the Territory on the Northwest Coast of America Lying Westward of the Rocky Mountains, signed at Washington June 15, 1846. Original in English.
Draft treaty proposed by the Government of Great Britain June 6, 1846, submitted to the Senate June 10, 1846. Resolution of advice June 12, 1846. Treaty submitted to the Senate June 16, 1846. Resolution of advice and consent June 18, 1846. Ratified by the United States June 19, 1846. Ratified by Great Britain July 14, 1846. Ratifications exchanged at London July 17, 1846. Proclaimed August 5, 1846.

The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, deeming it to be desirable for the future welfare of both countries that the state of doubt and uncertainty which has hitherto prevailed respecting the sovereignty and government of the Territory on the northwest coast of America lying westward of the Rocky or Stony Mountains, should be finally terminated by an amicable compromise of the rights mutually asserted by the two Parties over the said Territory, have respectively named Plenipotentiaries to treat and agree concerning the terms of such settlement, that is to say: the President of the United States of America, has, on his part, furnished with Full Powers, James Buchanan, Secretary of State of the United States, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, has, on her part, appointed the Right Honorable Richard Pakenham, a Member of Her Majesty's most honorable Privy Council, and Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States; who, after having communicated to each other their respective full Powers, found in good and due form, have agreed upon and concluded the following articles:

Article I.

From the point on the forty-ninth parallel of north latitude where the boundary laid down in existing treaties and conventions[1] between

[1] See Documents 40 and 56.

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the United States and Great Britain terminates, the line of boundary between the territories of the United States and those of Her Britannic Majesty shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island; and thence southerly through the middle of the said channel, and of Fuca's Straits to the Pacific Ocean; provided, however, that the navigation of the whole of the said channel and Straits south of the forty ninth parallel of north latitude remain free and open to both Parties.

ARTICLE II.

From the point at which the forty-ninth parallel of north latitude shall be found to intersect the great northern branch of the Columbia River, the navigation of the said branch shall be free and open to the Hudson's Bay Company and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, and thence down the said main stream to the Ocean, with free access into and through the said River or Rivers, it being understood that all the usual portages along the line thus described shall in like manner be free and open. In navigating the said River or Rivers, British subjects with their goods and produce, shall be treated on the same footing as citizens of the United States; it being however always understood that nothing in this article shall be construed as preventing, or intended to prevent, the Government of the United States from making any regulations respecting the navigation of the said river or rivers, not inconsistent with the present treaty.

ARTICLE III.

In the future appropriation of the territory, south of the forty-ninth parallel of north latitude, as provided in the first article of this Treaty, the possessory rights of the Hudson's Bay Company and of all British subjects who may be already in the occupation of land or other property, lawfully acquired within the said Territory, shall be respected.

ARTICLE IV.

The farms, lands, and other property of every description belonging to the Puget's Sound Agricultural Company on the north side of the Columbia River, shall be confirmed to the said Company. In case however the situation of those farms and lands should be considered by the United States to be of public and political importance, and the United States' Government should signify a desire to obtain possession

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of the whole, or of any part thereof, the property so required shall be transferred to the said Government, at a proper valuation, to be agreed upon between the Parties.

ARTICLE V.

The present Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty; and the ratifications shall be exchanged at London, at the expiration of six months from the date hereof, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Washington the fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-six.

[Seal] JAMES BUCHANAN
[Seal] RICHARD PAKENHAM.

NOTES

The papers in the treaty file include the signed original of the treaty, two attested resolutions of the Senate, of June 12 and 18, 1846, respectively (Executive Journal, VII, 89, 95), the duplicate United States instrument of ratification of June 19, the British instrument of ratification of July 14, the certificate of the exchange of ratifications at London on July 17, and the original proclamation of August 5, 1846. The various papers are in customary form; and from the text of the treaty included in the British instrument of ratification it appears that the *alternat* was duly observed.

THE FULL POWERS

In the preamble of the treaty there is the usual statement of the communication of the full powers; but there is a difference in the references to the respective Plenipotentiaries, as it is said that James Buchanan, Secretary of State, had been "furnished with Full Powers", and that the Right Honorable Richard Pakenham had been "appointed".

In this case the original full powers were not exchanged, for that given to James Buchanan is in the treaty file. It is in customary form, reading as follows (recorded in D.S., 3 Credences, 176):

James K. Polk, President of the United States of America,

To all whom these presents shall concern, Greeting:

Know Ye, That I have given and granted, and do hereby give and grant, to James Buchanan, Secretary of State of the United States, full power and authority, and also general and special command, to meet and confer with Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, he being furnished

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with like full power on the part of his Government; and with him to treat of and concerning the boundary line between the United States and the British possessions in North America, from its western termination in the Rocky Mountains to the Pacific Ocean, and of all matters and subjects connected therewith, which may be interesting to the two Nations; and to conclude and sign a treaty or treaties, convention or conventions, touching the premises, for the final ratification of the President of the United States, by and with the advice and consent of the Senate thereof.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed. Given under my hand, at the City of Washington, [Seal] this 13th day of June, A.D. 1846, and of the Independence of the United States the seventieth.

JAMES K. POLK

By the President:
JAMES BUCHANAN
Secretary of State.

No copy of the full power of the British Plenipotentiary (the Right Honorable Richard Pakenham) is available; but instruction No. 6 to Pakenham from Lord Aberdeen, British Secretary of State for Foreign Affairs, thus gives its substance (Library of Congress, Pakenham Papers, facsimiles from the Public Record Office, London, Foreign Office Records, vol. 115:85; hereinafter cited as "Pakenham Papers"):

FOREIGN OFFICE *February 27. 1844*

SIR, I transmit to you herewith, a Full Power which The Queen has been graciously pleased to grant to you under the Great Seal, authorizing and empowering you to negotiate and conclude, with the Minister or Ministers duly vested with similar Power and Authority on the part of The President of the United States of America, any Treaty or Agreement for the arrangement of matters which are now in discussion, or which may hereafter come into discussion, between Her Majesty and the United States.

I am, with great Truth and Regard, Sir, your most obedient humble servant

ABERDEEN

The Right Honourable RICHARD PAKENHAM
&c &c &c

THE SENATE PROCEDURE

In the case of this treaty President Polk adopted the unusual course of asking the advice of the Senate prior to the signature of the agreement. On June 10, 1846, he sent to the Senate the following message (Executive Journal, VII, 84–85):

I lay before the Senate a proposal in the form of a convention, presented to the Secretary of State on the sixth instant, by the envoy extraordinary and minister plenipotentiary of Her Britannic Majesty, for the adjustment of the Oregon question, together with a protocol of this proceeding. I submit this proposal to the consideration of the Senate and request their advice as to the action which in their judgment it may be proper to take in reference to it.

In the early periods of the Government the opinion and advice of the Senate were often taken in advance upon important questions of our foreign policy. General Washington repeatedly consulted the Senate and asked their previous advice upon pending negotiations with foreign powers; and the Senate in every instance responded to his call by giving their advice, to which he always conformed his action. This practice, though rarely resorted to in later times, was in my judgment eminently wise, and may on occasions of great importance be properly revived. The Senate are a branch of the treaty-making power, and by consulting

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them in advance of his own action, upon important measures of foreign policy which may ultimately come before them for their consideration, the President secures harmony of action between that body and himself. The Senate are, moreover, a branch of the war-making power, and it may be eminently proper for the Executive to take the opinion and advice of that body in advance, upon any great question which may involve in its decision the issue of peace or war. On the present occasion the magnitude of the subject would induce me under any circumstances to desire the previous advice of the Senate, and that desire is increased by the recent debates and proceedings in Congress, which render it, in my judgment, not only respectful to the Senate, but necessary and proper, if not indispensable to insure harmonious action between that body and the Executive. In conferring on the Executive the authority to give notice for the abrogation of the convention of 1827, the Senate acted publicly so large a part that a decision on the proposal now made by the British Government, without a definite knowledge of the views of that body in reference to it, might render the question still more complicated and difficult of adjustment. For these reasons I invite the consideration of the Senate to the proposal of the British Government for the settlement of the Oregon question, and ask their advice on the subject.

My opinions and my action on the Oregon question were fully made known to Congress in my annual message of the second of December last, and the opinions therein expressed remain unchanged.

Should the Senate, by the constitutional majority required for the ratification of treaties, advise the acceptance of this proposition or advise it with such modifications as they may upon full deliberation deem proper, I shall conform my action to their advice. Should the Senate, however, decline by such constitutional majority to give such advice, or to express an opinion on the subject, I shall consider it my duty to reject the offer.

I also communicate herewith an extract from a dispatch of the Secretary of State to the minister of the United States at London, under date of the 28th of April last, directing him, in accordance with the joint resolution of Congress "concerning the Oregon Territory," to deliver the notice to the British Government for the abrogation of the convention of the 6th of August, 1827, and also a copy of the notice transmitted to him for that purpose, together with extracts from a dispatch of that minister to the Secretary of State, bearing date on the 18th day of May last.

The papers accompanying the message were the British proposal (in the form of a draft treaty) presented by the British Minister on June 6, with a protocol (quoted below) of the conference of that date; extracts from, and the enclosure to, the instruction to Louis McLane, Minister at London, of April 28, 1846, regarding the form of abrogation of the convention of August 6, 1827 (Document 56); and most of a despatch of McLane of May 18, 1846 (Senate Confidential Document No. 8, 29th Congress, 1st session, Regular Confidential Documents, XX, 379–89; reprinted as part of Senate Document No. 489, 29th Congress, 1st session, serial 478).

Upon receipt of the presidential message of June 10, the Senate at once refused either to refer it to the Committee on Foreign Relations, or to print the papers transmitted, or to postpone consideration for five days (Executive Journal, VII, 85–86); and on Friday, June 12, 1846, after a proposal to fix a limited term for the right of navigation of the Columbia River (Article 2) had been negatived, the Senate adopted the following resolution by a vote of 38 yeas to 12 nays (*ibid.*, 89; collated with the attested resolution in the file):

Resolved, (two thirds of the Senators present concurring) That the President of the United States be and he is hereby advised to accept the proposal of the British

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Government accompanying his message to the Senate dated 10th June, 1846, for a Convention to settle boundaries &c, between the United States and Great Britain west of the Rocky or Stony Mountains.

The full power to Buchanan was issued on June 13; on the following Monday, June 15, the treaty was signed in the form proposed; the following statement is from the entry for that day in the Diary of James K. Polk, I, 470–71 (hereinafter cited as "Polk's Diary"):

About 3½ P.M. to-day the Secretary of State and the Brittish Minister concluded & signed a convention for the settlement of the Oregon question, being the same submitted by the latter on the 6th Instant, by me submitted to the Senate for their advice on the 10th, and by that body advised on the 12th Instant. Mr. Buchanan brought the convention to me, and my Private Secretary started with it, accompanied with a message from me, to the Senate, but before he reached the Capitol the Senate had adjourned for the day.

The treaty was sent to the Senate on June 16 without any further accompanying papers, with the following message (Executive Journal, VII, 90):

In accordance with the resolution of the Senate of the 12th instant, that "the President of the United States be, and he is hereby, advised to accept the proposal of the British Government, accompanying his message to the Senate dated 10th June, 1846, for a convention to settle boundaries, &c., between the United States and Great Britain west of the Rocky or Stony Mountains," a convention was concluded and signed on the 15th instant by the Secretary of State, on the part of the United States, and the envoy extraordinary and minister plenipotentiary of Her Britannic Majesty, on the part of Great Britain.

This convention I now lay before the Senate for their consideration, with a view to its ratification.

Again the Senate refused reference to committee; the papers previously transmitted were ordered printed; resolutions asking for further papers were adopted on June 17 and 18; on the latter day an amendment to the pending resolution, proposing as a "compromise" the line of 54°40′ north latitude, received only five votes; the resolution of advice and consent to the ratification of the treaty was adopted by a vote of 41 yeas to 14 nays (*ibid.*, 90–95; this was a full Senate except for Spencer Jarnagin, of Tennessee, who voted among the minority on June 12; see Polk's Diary, I, 479).

Thus the papers before the Senate during its proceedings on the treaty were merely those transmitted with the message of June 10, 1846. Not until July 21 were papers transmitted in response to the requests of June 17 and 18; these included all the relevant instructions to Louis McLane, Minister at London, but none of his despatches, except extracts from two of them (Executive Journal, VII, 123); the Secretary of State reported at some length and decidedly against the publication of all the despatches of McLane (Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 25–26); with that report Polk concurred; in the first of the two presidential messages of July 21 it was said that the publication of those despatches "would be highly prejudicial to the public interest"; but it was added that the President was "not only willing but anxious that

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every Senator who may desire it shall have an opportunity of perusing these dispatches at the Department of State" (Executive Journal, VII, 123).

The papers communicated to the Senate on July 21, 1846, were at once ordered printed in confidence; but the injunction of secrecy was later (August 6 and 7) removed from the proceedings and the correspondence transmitted, which were then (August 8) ordered printed as a public document (*ibid.*, 124, 137, 142, 148). That print is Senate Document No. 489, 29th Congress, 1st session, serial 478.

The two votes in the Senate (June 12 and 18, 1846) were to the same effect, for the proposal of the British Government was as nearly like the signed treaty as an unsigned draft could well be; the draft treaty naturally differed, in the preamble and elsewhere, in accordance with the principle of the *alternat;* but otherwise, with blanks for the names and styles of the plenipotentiaries, for the number of months to be allowed for the exchange of ratifications, and for the date, the proposal was identically [1] the same in wording as the treaty.

The brevity of the Senate proceedings (June 10–12 and 16–18) is to be attributed to the elaborate debates on the Oregon question which had previously been had in that body (as well as in the House of Representatives) during the same session of Congress; in his message of June 10 Polk alluded to those "recent debates and proceedings in Congress"; the chief occasion thereof was the resolution of authorization to abrogate the convention of August 6, 1827 (Document 56); to those congressional proceedings reference is made below.

The treaty was communicated to Congress with the presidential message of August 5, 1846 (Richardson, IV, 457–58), the date of its proclamation.

In the strictest sense the instrument signed on June 15, 1846, is a treaty; and it is so styled in Articles 2, 3, and 5 of the text, in the Senate resolution of June 18, and in each instrument of ratification; but the protocol of June 6 referred to a "convention" (the draft with that protocol is headed "Draft of Convention"), which is the term used in the presidential messages to the Senate of June 10 and June 16, in the resolution of the Senate of June 12, and in the presidential message to Congress of August 5, 1846.

The Papers Printed

The relevant papers published at Washington in 1845–46 were (*a*) those with the annual message to Congress of December 2, 1845, which are in Senate Document No. 1, 29th Congress, 1st session, serial 470, pages 138–42; they comprise notes and protocols written at Washington, two in 1842 and the remainder from February 24, 1844, to August 30, 1845; (*b*) those sent to the Senate and the House of Representatives with the messages of February 7, 1846, which are

[1] In the preamble "Territory on" was "Territory of" in the draft as submitted to the Senate; but in the draft as sent to Pakenham from London the word was "on" (Pakenham Papers, F.O. 115 : 91, instruction No. 19, May 18, 1846, enclosure).

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in Senate Document No. 117, 29th Congress, 1st session, serial 473 (the same papers are in House Document No. 105 of that session, serial 483); these comprise the notes written at Washington from December 27, 1845, to February 4, 1846, and extracts from one instruction to and one despatch from London, of December 13, 1845, and January 3, 1846, respectively; (*c*) those sent to the Senate from June 10 to July 21, 1846, which are in Senate Document No. 489, 29th Congress, 1st session, serial 478; these include twelve instructions from Buchanan to McLane (one in part) from July 12, 1845, to June 22, 1846, and extracts from three of McLane's despatches, as well as one formal note of Lord Aberdeen; only two of the papers mentioned (the instruction of April 28, 1846, and the despatch of May 18, 1846, each in part) were before the Senate during the consideration of the Oregon Treaty.

Some of the diplomatic exchanges and other material of importance are printed in Foreign Relations, 1872, part 2, Papers Relating to the Treaty of Washington, V (treaty of May 8, 1871; that volume is here usually cited as "Washington Papers, V").

With two exceptions (two short and unimportant British notes, of August 22, 1844, and January 6, 1846, respectively), the communications between the two Governments for the period from November 15, 1842, up to but not including June 6, 1846, are printed in British and Foreign State Papers, XXXIV, 49–145. That volume contains also (mostly in part only) various instructions of the Earl of Aberdeen, British Secretary of State for Foreign Affairs, and despatches from the Right Honorable Richard Pakenham, British Minister at Washington, and his predecessor, Henry Stephen Fox.

In the Library of Congress are facsimiles from the Public Record Office, London, of numerous instructions of Aberdeen to Pakenham, and despatches of the latter from the beginning of his mission; these are here cited as "Pakenham Papers".

All the instructions of Buchanan to McLane on Oregon (except a short and unimportant instruction of September 13, 1845), with other papers, including some of the diplomatic correspondence, are printed in Moore, Works of James Buchanan, VI and VII.

The Oregon Question

The first agreement between the United States and Great Britain dealing directly with the Oregon country was the convention of October 20, 1818 (Document 40), Article 3 whereof reads as follows:

> It is agreed, that any Country that may be claimed by either Party on the North West Coast of America, Westward of the Stony Mountains, shall, together with it's Harbours, Bays, and Creeks, and the Navigation of all Rivers within the same, be free and open, for the term of ten Years [1] from the date of the Signature of the present Convention, to the Vessels, Citizens, and Subjects of the Two Powers: it being well understood, that this Agreement is not to be construed to the Prejudice of any Claim, which either of the Two High Contracting

[1] Extended indefinitely by the convention of August 6, 1827 (Document 56), which was subject to abrogation on twelve months' notice by either party.

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Parties may have to any part of the said Country, nor shall it be taken to affect the Claims of any other Power or State to any part of the said Country; the only Object of The High Contracting Parties, in that respect, being to prevent disputes and differences amongst Themselves.

By Article 2 of the same convention the northern boundary of the United States had been drawn from the northwesternmost point of the Lake of the Woods to the 49th parallel of north latitude, and thence due west along said parallel to the Rocky Mountains, meaning, as was afterwards assumed, to the summit of the Rocky Mountains.

In 1818 there were both Russian and Spanish claims in the Oregon country; but the treaty with Spain of February 22, 1819 (Document 41), gave to the United States all the rights of Spain north of the 42d parallel; and the claims of Russia south of 54°40′ north latitude were relinquished by the conventions made, respectively, with the United States on April 17, 1824 (Document 46), and with Great Britain on February 28, 1825 (French text and English translation in British and Foreign State Papers, XII, 38–43).

The Oregon country, the sovereignty over which was left to be discussed between the United States and Great Britain, was thus the region from the Pacific eastward to the Rocky Mountains between latitudes 42° and 54°40′ north, comprising an area of some 500,000 square miles, which now includes the States of Washington, Oregon, and Idaho, portions of Montana and Wyoming (about 286,500 square miles of United States territory), and a large part of British Columbia.[1]

On various occasions, as, for example, in the London protocols of December 16 and 19, 1826 (American State Papers, Foreign Relations, VI, 661–71), grounds of the respective claims of the two Governments were set forth at length; and the arguments were elaborated in the later exchanges (most of them cited below) to a degree which wellnigh precludes summary. The facts as to early discoveries, explorations, and otherwise were in dispute and were, indeed, imper-

[1] A map entitled "The Oregon Country" faces p. 12; in order that the diversity of geographic character of the country traversed by the 49th-parallel boundary west of the summit of the Rocky Mountains may be appreciated, as it cannot be on a "flat map", the historical data are there shown upon a physiographic diagram which has been prepared and drawn by Mrs. Sophia A. Saucerman, Assistant Geographer of the Department of State. The representation of physiographic features in the United States and a small portion of southern Canada is based (with the author's permission) upon Dr. A. K. Lobeck's Physiographic Diagram of the United States, scale 1:3,000,000. The representation of physiographic features in Canada is much more generalized, the attempt being made to indicate chiefly the physiographic regions or provinces. The Canadian portion is based principally upon the following publications: (1) Guidebooks Nos. 8, 9, and 10 (covering excursions in western Canada), issued by the Canadian Geological Survey, Ottawa, 1913; (2) The Physical Map of Canada, scale 1:3,801,000, issued in 1928 by the Canadian Department of the Interior; and (3) a map entitled "British Columbia", scale 1:1,000,000, published in 1933 by the Department of Lands of British Columbia. Acknowledgment is also made of information and a sketch map furnished by Professor Edwin T. Hodge, of the University of Oregon.

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fectly known; and there were divergent conclusions even from such facts as were unquestioned.

It may perhaps be said that the chief bases of the United States claim to the Oregon country were (*a*) the supposed possibility that the Louisiana cession of 1803 included territory west of the Rocky Mountains; (*b*) the Spanish title to the Oregon country, which passed to the United States under the treaty with Spain of February 22, 1819 (Document 41); (*c*) the discovery and exploration of the Columbia River in 1792 by Captain Robert Gray; (*d*) the explorations of the Lewis and Clark expedition of 1804–6; (*e*) the fur-trading settlement established at Astoria in 1811 by John Jacob Astor, coupled with the restoration thereof by the British Government after the War of 1812, pursuant to the Treaty of Ghent (Document 33); and (*f*) the principles of continuity and contiguity, particularly in respect of the region south of the 49th parallel.

At no time did the British Government claim exclusive sovereignty over the whole Oregon country; its contention was that both Great Britain and the United States had rights there from which might follow division of the territory between the two powers. The British argument was grounded on (*a*) the Nootka controversy and the Nootka Sound Convention between Great Britain and Spain of October 28, 1790, which was considered as being in full force (though deemed by this Government to have been terminated by the war between Great Britain and Spain begun in 1796); (*b*) the explorations of Captain James Cook in 1778, during his third voyage; (*c*) the explorations of Captain George Vancouver in 1792; (*d*) the explorations of Alexander Mackenzie (later Sir Alexander Mackenzie) in 1792–93; and (*e*) settlement, begun with the trading post established in 1806 by the North-West Company on Fraser Lake, situated in 54° north latitude and thought to have been "the first settlement made by civilized men west of the Rocky Mountains" (Washington Papers, V, 241).

The controversial literature of the Oregon question in its latest years extended beyond governmental communications or publications; there were pamphlets and books written on each side of the Atlantic; the most complete presentation of the American case was in the work of Robert Greenhow ("Translator and Librarian to the Department of State"), entitled "The History of Oregon and California", which appeared in 1845; by the act of February 20, 1845 (5 Statutes at Large, 722–23), 1,500 copies thereof were directed to be purchased and distributed by the Department of State. Buchanan wrote on June 24, 1848, that "it was from this history that my information as to the facts in support of our claim was principally derived" (D.S., 36 Domestic Letters, 447–48; Moore, Works of James Buchanan, VIII, 106; Greenhow's 1840 Memoir on the Northwest Coast of North America was printed as Senate Document No. 174, 26th Congress, 1st session, serial 357).

Of the English works of the time, the most authoritative was The Oregon Question Examined, by Sir Travers Twiss; on March 3, 1846,

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two copies of this work were sent from London to Pakenham with a suggestion for republication in America (Pakenham Papers, F.O. 115:91.

Recent researches have made available much that was unknown to the writers of ninety years ago regarding the Spanish explorations on the northwest coast of America. Two works of Henry R. Wagner should be consulted, Spanish Voyages to the Northwest Coast of America in the Sixteenth Century (including those down to 1602) and Spanish Explorations in the Strait of Juan de Fuca (1790–92). In his foreword to the volume last cited, the learned author writes (p. iv):

> I have no intention of belittling the important work which Captain Vancouver did in this quarter but it seems time to present the other side of the picture. Vancouver was not the first to explore these channels, to anchor in these ports and to view the majestic mountains, even although many of these still bear the names he gave them. My aim is to do justice to the Spaniards who preceded him and who have left us accounts of their experiences just as vivid and entertaining as his.

A thorough summary of British and American exploration, discovery, and settlement is in Samuel Flagg Bemis, A Diplomatic History of the United States, chapter 16, "Oregon"; and see Schafer, "The Acquisition of Oregon Territory, part 1, Discovery and Exploration", in University of Oregon Bulletin, VI, No. 3, December 1908. American (land) explorations in the west are charted in Paullin, Atlas of the Historical Geography of the United States, plate 39B, with text at pages 19–21; see also Explorations of the Pacific Coast Region of North America, appendix I of the Joint Report of the International Boundary Commission submitted May 10, 1921, pp. 61–76.

The Nootka Sound Controversy

In Manning, "The Nootka Sound Controversy" (Annual Report of the American Historical Association for the Year 1904, 279–478), is a history of the events leading up to that dispute, of the negotiations between Great Britain and Spain, and of the settlement reached. From the introductory chapter of that work (pp. 283–84) is excerpted the following summary of the Nootka incident of 1789:

> Nootka Sound[1] is a small inlet [entrance 49°33′ north] on the western shore of Vancouver Island. It was christened and made known to the world by Captain Cook in 1778. A few years afterwards a flourishing fur trade sprang up between the Northwest Coast and China. Nootka became the center of this trade, though it remained for several years without any settlement except an Indian village. On account of its sudden and growing importance, the Russians, English, and Spaniards all laid plans for occupying the port. It happened that all planned to carry out the project in the year 1789, a year that meant so much for the subsequent history of the world. Though the Nootka incident can make no claim to rank in importance with the great events of that year, yet it was destined to have an influence on the movements then started and to be influenced in turn by them.
>
> The Russian plans were not acted upon, but the plans of the other two were. An English expedition from India and a Spanish from Mexico each sailed in the

[1] Captain Cook first called the waters "King Georges Sound", but later adopted the native name (*ibid.*, 306).

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spring of 1789 to establish a colony at Nootka. The promoters of neither knew anything of the other. The Spanish commander arrived first and took possession. Nearly two months later the Englishman came. A quarrel ensued. The Spaniard seized the Englishman, imprisoned him, his officers and crew, and sent him to Mexico as a prize. A consort vessel arrived a few days later and met the same fate. Two other English vessels had been seized earlier. One of them had been released on bond and the other had been confiscated without adjudication.

The Viceroy of Mexico, instead of acting on his own responsibility, reported the matter to the Government at Madrid. The Spanish Court complained to the British that subjects of the latter had violated the territorial sovereignty of the former, and demanded that the offenders be punished to prevent such enterprises in the future. The British Cabinet rejected the Spanish claim to exclusive sovereignty over the territory in question, and suspended all diplomatic relations until Spain should have offered a satisfactory reparation for the insult which His Britannic Majesty felt that his flag had suffered. Each Court refused to grant the demand of the other and stood firmly on the ground originally taken. To support their respective claims, both Governments made the most extensive armaments. Each nation also called upon its allies for assurances of support and entered negotiations for forming new alliances. For a time it seemed that all Europe would be drawn into war over what, on the face of it, appeared to be an insignificant quarrel between two obscure sea captains.

On October 28, 1790, the convention between Great Britain and Spain which is generally known as the Nootka Sound Convention was signed at San Lorenzo el Real (French text, with English translation, but without the secret article, in British and Foreign State Papers, I, pt. 1, 663–67; English translation, including the secret article, in Manning, *op. cit.*, 454–56).

During the later years of the Oregon question the relation thereto of the Nootka Sound controversy was extensively debated; much argument was devoted to the Nootka Sound Convention of October 28, 1790, its interpretation and legal effect; and there were two opinions as to whether that convention was terminated by the war between Great Britain and Spain which began in 1796; but neither in the literature of the period nor in the diplomatic exchanges was mention made of either of the two later conventions between Great Britain and Spain which dealt with the Nootka Sound affair. Those two conventions were signed, respectively, at Whitehall on February 12, 1793, and at Madrid on January 11, 1794 (English translations from the Spanish are in Manning, *op. cit.*, 467–68, 469–70).

By Article 1 of the Nootka Sound Convention of October 28, 1790, provision was made for the restoration to British subjects of the "buildings and tracts of land" of which they had been "dispossessed" at Nootka in 1789; Article 2 related to indemnity; the Commissioners appointed to execute Article 1 were Captain George Vancouver for Great Britain and Don Juan Francisco de Bodega y Quadra for Spain; they met at Nootka late in the summer of 1792 but failed to agree (*ibid.*, 464); the convention of February 12, 1793, settled the matter of indemnity; the convention of January 11, 1794 (signed in English and Spanish), provided for the due execution of Article 1 of the 1790 convention and contained also other important clauses, as follows (text here from enclosure to despatch No. 718, of May 22, 1934, from London, D.S., file 026 Treaties/1265; the English version of this convention has not, it seems, been heretofore printed):

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Their Britannick and Catholick Majesties being desirous to remove and obviate all Doubt and Difficulty relative to the Execution of the First Article of the Convention concluded between Their said Majesties on the Twenty Eighth of October One Thousand Seven Hundred and Ninety have resolved and agreed that new Instructions shall be sent to the Officers whom They have respectively commissioned to carry into due Effect the said Article, which Instructions shall be of the following Tenor.

"That in the shortest Time that may be possible after the Arrival of the "said Officers at Nootka they shall meet together at or near the Place on "which stood the Buildings which were formerly occupied by the Subjects "of His Britannick Majesty, at which Time and Place they shall mutually "exchange the following Declaration and Counter Declaration."

"Declaration."

"I N.N. in the Name and by Order of His Catholick Majesty do by These "Presents restore to N.N. the Buildings and Districts of Land situated on "the North West Coast of the Continent of North America, or on the "Islands adjacent to that Continent, of which the Subjects of His Britannick "Majesty were dispossessed about the Month of April[1] One Thousand "Seven Hundred and Eighty Nine by a Spanish Officer. In Witness whereof "I have signed this Declaration, and have hereunto affixed the Seal of my "Arms. Done at Nootka the day of One Thousand Seven "Hundred and Ninety ."

"Counter Declaration."

"I N.N. in the Name and by Order of His Britannick Majesty do by These "Presents Declare that the Buildings and Districts of Land situated on the "North West Coast of the Continent of North America, or on the Islands "adjacent to that Continent, of which the Subjects of His Brittannick "Majesty were dispossessed about the Month of April One Thousand Seven "Hundred and Eighty Nine by a Spanish Officer, have been restored to me "by N.N., which Restitution I declare to be full and satisfactory. In witness "whereof I have signed this Counter Declaration, and have hereunto affixed "the Seal of my Arms. Done at Nootka the Day of One "Thousand Seven Hundred and Ninety ."

"That the British Officer shall then cause the British Flag to be hoisted "on the land thus restored in Token of Possession. And that after these "Formalities the Officers of the Two Crowns shall respectively withdraw "their People from the said Port of Nootka."

Their said Majesties have farther agreed that it shall be free for the Subjects of both Nations to frequent occasionally the aforesaid Port and to construct there temporary Buildings for their Accommodation during their said occasional Residence: But that Neither the One nor the Other of the Two Parties shall make any permanent Establishment in the said Port, or claim there any Right of Sovereignty or territorial Dominion to the Exclusion of the Other. And Their said Majesties will assist Each Other mutually to maintain to Their Subjects free Access to the said Port of Nootka against any other Nation which should attempt to establish there any Sovereignty or Dominion.

In Witness whereof We the undersigned Ambassador Extraordinary and Plenipotentiary of His Britannick Majesty, and First Secretary of State and of the Despacho of His Catholick Majesty, in the Name and by the express Order of our respective Sovereigns have signed the present Agreement and have hereunto affixed the Seals of our Arms.

Done at Madrid the Eleventh Day of January One Thousand Seven Hundred and Ninety Four.

ST. HELENS. [Seal]
EL DUQUE DE LA ALCUDIA. [Seal]

[1] The "Spanish Officer", Estevan José Martinez, did not arrive at Nootka until May 5, 1789 (Manning, *op. cit.*, 312, 432).

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The acts prescribed by the convention of January 11, 1794, were duly performed at Nootka on March 28, 1795, by Commissioners of the two Governments, Thomas Pearce, First Lieutenant in His Majesty's Marine Forces, for Great Britain, and Brigadier General José Manuel de Álava, for Spain (see Pearce to the Duke of Portland, April 25, 1795, in the London Gazette, No. 13813, p. 943, September 12–15, 1795).

It appears that in 1846 neither the indemnity convention of February 12, 1793 (which was not very material to claims of sovereignty), nor the convention of January 11, 1794, for the mutual withdrawal from Nootka, etc., was known to the Government of the United States (see the elaborate discussion of the Nootka Sound controversy in the instruction of October 9, 1843, in D.S., 15 Instructions, Great Britain, 144–72; references are there made to "the most important documents relating to the subject which have yet been published", and various articles of the 1790 Nootka Convention are quoted; but there is no mention of the conventions of 1793 and 1794). On November 30, 1843, Edward Everett, Minister at London, sought the aid of Washington Irving, then Minister at Madrid, in respect of the Oregon question. Everett hoped (vainly, as it proved) to obtain further Nootka papers. He wrote that "All that was ever published of the Nootka negotiations will be found in the Annual Register for 1790" (D.S., 51 Despatches, Great Britain, No. 69, December 2, 1843, enclosure); later, with his despatch of July 17, 1844 (D.S., 53 Despatches, Great Britain, No. 162; see also 52 *ibid.*, No. 152, June 29, 1844), Everett transmitted a copy of the Narrative of the Negotiations Occasioned by the Dispute between England and Spain in the Year 1790 (a rare volume, probably of 1791, by Sir James Bland Burges; see Manning, *op. cit.*, 474).

That Secretary of State James Buchanan, when he was engaged in the Oregon negotiations in 1845, was ignorant of the later Nootka Conventions (of 1793 and 1794) is indeed evident from what he wrote on the subject to the British Plenipotentiary (Senate Document No. 1, 29th Congress, 1st session, serial 470, p. 164):

> That convention [of October 28, 1790] provides, by its first and second articles, for the restoration of the lands and buildings of which the subjects of Great Britain had been dispossessed by the Spaniards, and the payment of an indemnity for the injuries sustained. This indemnity was paid by Spain; but no sufficient evidence has been adduced, that either Nootka Sound, or any other spot upon the coast, was ever actually surrendered by that power to Great Britain. All we know with certainty is, that Spain continued in possession of Nootka Sound until 1795, when she voluntarily abandoned the place.

The foregoing was written on July 12, 1845; this was added on August 30, 1845 (*ibid.*, 188):

> As to possession, if Meares was ever actually restored to his possessions at Nootka Sound, whatever these may have been, the undersigned has never seen any evidence of the fact. It is not to be found in the journal of Vancouver, although this officer was sent from England for the avowed purpose of witnessing such a restoration. The undersigned knows not whether any new understanding took place between the British and Spanish governments on this subject; but

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one fact is placed beyond all doubt—that the Spaniards continued in the undisturbed possession of Nootka Sound until the year 1795, when they voluntarily abandoned the place. Great Britain has never, at any time since, occupied this or any other position on Vancouver's island.

The texts (in Spanish) of the Nootka Conventions of February 12, 1793, and January 11, 1794, are printed in Calvo, Recueil complet des traités de l'Amérique latine, III, 364–68, published in 1862; it has been thought that this was the earliest publication of them (White, "Boundary Disputes and Treaties", in Canada and Its Provinces, VIII, 848); but they appeared at Madrid in 1843 in Cantillo, Tratados, convenios y declaraciones de paz y de comercio, 646, 653–54; and at page 633 of that volume is a statement regarding the execution of the convention of 1794. It seems strange that Washington Irving at Madrid missed the work last mentioned when he was called on by Edward Everett for information regarding the Nootka controversy (see the letters of Irving of December 23, 1843, and January 15, 1844, enclosed with Everett's despatch No. 82, of February 2, 1844, in D.S., 52 Despatches, Great Britain); for, while that work is not strictly an official publication, it was edited by a former official of the Spanish Foreign Office and was dedicated to the Queen of Spain.

Various authors, by 1846, had given incomplete or inaccurate accounts of the proceedings at Nootka in March 1795 (e.g., Twiss, The Oregon Question Examined, 121–23; and see the works there cited; one of them, Koch, Histoire abrégée des traités de paix, was quoted in the Senate debates by Senator John Adams Dix, of New York; see Congressional Globe, XV, appendix, 314, February 18, 1846); but none of those writers made any mention of the convention of January 11, 1794; the second edition of the work of Robert Greenhow, History of Oregon and California (on which, as has been seen, Buchanan relied), appeared in 1845; there is cited (p. 257) supposed authority for the mistaken belief that "the Spanish flag flying at Nootka was never struck, and that the territory has been virtually relinquished by Great Britain", and it is given as the probability "that the Spaniards merely abandoned the place"; and Buchanan believed in the summer of 1845 that in 1795 Spain had "voluntarily abandoned" Nootka (see the quotations above from the notes of July 12 and August 30, 1845).

There would necessarily have been a marked difference in the argument of the Oregon question in 1845 and 1846 on the one side and on the other if this Government had become informed, say, in 1844 (from the treaty compilation published at Madrid in 1843 and cited above) of the text of the Nootka Convention of January 11, 1794.

The Earlier Discussions

Certain negotiations, including those prior and subsequent to 1818, are to be mentioned; they are recounted, with numerous citations, in Moore, International Arbitrations, I, 198–209.

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The treaty of 1783 (Document 11) had drawn an impossible boundary from the most northwestern point of the Lake of the Woods by providing that the line should run thence due west to the Mississippi, the source of which is some 150 miles almost due south of the point mentioned; and the joint survey of the region contemplated by Article 4 of the Jay Treaty (Document 16) was not had. By Article 5 of the Hawkesbury-King Convention signed at London on May 12, 1803 (American State Papers, Foreign Relations, II, 584–85), it was provided that the boundary in that quarter should be the shortest line from the northwesternmost point of the Lake of the Woods to the nearest source of the Mississippi; but, owing to the cession of Louisiana, the Senate resolution of advice and consent excepted Article 5 (Executive Journal, I, 463–64), and the convention did not go into force.

In 1807, in negotiations following the signature at London of the treaty of December 31, 1806 (British and Foreign State Papers, I, pt. 2, 1190–1203), an article was drafted (and was found acceptable) by which the boundary would run from the most northwestern point of the Lake of the Woods to and along the 49th parallel of north latitude "as far as their said respective territories extend in that quarter", with a proviso excepting the northwest coast of America and any territories claimed by either party westward of the Rocky Mountains; Madison wrote that it was "much to be wished and pressed . . . that the proviso . . . should be omitted" (American State Papers, Foreign Relations, III, 162, 165, 185); nothing came of those negotiations, as President Jefferson refused to submit the treaty of December 31, 1806, to the Senate; but the desire of the Jefferson administration to omit the proviso mentioned was used in argument by the "forty-niners" of 1846 (see the remarks of Senator Thomas H. Benton in Congressional Globe, XV, 590, April 2, 1846).

Further discussions took place at Ghent in 1814, and, so far as concerned the boundary, the substance of the article drafted in 1807 was again put forward by the American Plenipotentiaries (November 10, 1814); but because of an additional clause regarding the navigation of the Mississippi proposed by the British Plenipotentiaries (November 26, 1814), assent to which was declined, the Treaty of Ghent (Document 33) contained no article on the subject (American State Papers, Foreign Relations, III, 738, 743–45; IV, 377).

During the negotiations which resulted in the convention of October 20, 1818 (Document 40), the American Plenipotentiaries (Albert Gallatin and Richard Rush) proposed to extend the line along the 49th parallel west to the Pacific Ocean. The British Plenipotentiaries (Frederick John Robinson and Henry Goulburn) "did not make any formal proposition for a boundary", but an article proposed by them included language of agreement by the two parties "not to exercise as against each other[1] any other sovereign or territorial authority within the above-mentioned country lying between the forty-fifth

[1] This word "other", although omitted in the print cited, is in the original enclosure with the despatch of the American Plenipotentiaries of October 20, 1818.

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and forty-ninth parallels of latitude" (*ibid.*, IV, 381, 391; cf. the wording of the Nootka Convention of January 11, 1794, quoted above).

As a result of the Russian ukase of 1821 (as to which, see the notes to Document 46), discussions were resumed in 1823 at London; the respective Plenipotentiaries were Richard Rush, the American Minister, and, for Great Britain, the Right Honorable William Huskisson and the Right Honorable Stratford Canning; the British Secretary of State for Foreign Affairs was then George Canning; the final American proposal (as modified on June 29, 1824) was that Article 3 of the convention of October 20, 1818, should be continued for ten years and that during that term "no settlement shall be made on the Northwest Coast of America, or on any of the islands thereunto adjoining, by citizens of the United States, north of the forty-ninth degree of north latitude, or by British subjects either south of the said forty-ninth degree or north of the fifty-fifth degree of north latitude" (*ibid.*, V, 582, 563); the final British proposal (formally presented on July 13, 1824) was (with some clauses for rights of passage, navigation, and trade during ten years, and for protection of existing settlements during the same period) "that the boundary line between the territories claimed by his Britannic Majesty and those claimed by the United States, to the west, in both cases, of the Rocky mountains, shall be drawn due west along the 49th parallel of north latitude, to the point where that parallel strikes the great northeasternmost branch of the Oregon or Columbia river, marked in the maps as McGillivray's river, thence down along the middle of the Oregon or Columbia, to its junction with the Pacific Ocean; the navigation of the whole channel being perpetually free to the subjects and citizens of both parties" (*ibid.*, 582, 563, 564; as to the rejection of the respective proposals, see *ibid.*, 557, 563; the instructions to Rush of July 22, 1823, are in *ibid.*, 791–93; the arguments are not protocoled, but the report of Rush of August 12, 1824, in *ibid.*, 533 *et seq.*, has an account of them at pp. 553–57; Rush had learned of the convention with Russia of April 17, 1824, Document 46).

The "great northeasternmost branch" of the Columbia River was then called McGillivray or McGillivray's River, and later "the great northwesternmost branch" and also the "great northern branch", as in Article 2 of the Oregon Treaty; that "branch" is now deemed to be part of the main stream of the Columbia River, which crosses the international boundary at approximately 117°38′ west longitude (see the map facing page 12 and Paullin, Atlas of the Historical Geography of the United States, plate 93C and p. 61).

By Articles 1 and 2 of the convention of August 6, 1827 (Document 56), the "joint occupation" (as it had come to be called) of the Oregon country, provided by the convention of October 20, 1818 (Document 40), was indefinitely continued, subject to the right of either party to give one year's notice of abrogation of the convention; but in the negotiations which began at London in 1826, and from which that convention resulted, there had been further unsuccessful efforts to reach a definitive settlement of the Oregon question. In accordance with his instructions, Albert Gallatin, Minister at London, made the

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proposal (November 15, 1826) of the line of 49° north latitude to the Pacific as a permanent boundary, coupled with a grant in favor of British subjects of a perpetual right of navigation of the Columbia River from the boundary to the ocean (for the instructions, see American State Papers, Foreign Relations, VI, 645, and, for the proposal, *ibid.*, 652; it included some temporary provisions; and the involved and conditional wording of the navigation clauses reflects the then lack of complete geographical knowledge of the region); one of the British Plenipotentiaries observed that the cutting off of the southern portion of Vancouver Island "was quite inadmissible"; Gallatin suggested that there might be compensating deviations from the line; he had in mind the exchange of the southern end of Vancouver Island for the whole or part of the upper waters of the Columbia River, north of the proposed boundary (*ibid.*, 654, 656).

The proposal of the British Plenipotentiaries (William Huskisson and Henry Unwin Addington) is recorded in the protocol of December 1, 1826 (*ibid.*, 660); the offer was that of 1824, plus, as a detached territory, the whole of the Olympic Peninsula north of a straight line from the southern extremity of Gray's Harbor to the southern extremity of Hood's Inlet or Hood Canal (plate 93C in Paullin, *op. cit.*, shows the line of the offer); it was also suggested verbally that it might further, "perhaps, be agreed that the northern shore [of the Columbia River], for some distance from the mouth up the river, should remain unoccupied by both parties" (American State Papers, Foreign Relations, VI, 656; for the arguments, see Gallatin's despatches of November 25 and December 2, 1826, and the sixth and seventh protocols, of December 16 and 19, in *ibid.*, 652–56, 661–71).

The respective offers of 1826 were of influence in the final settlement twenty years later. The territorial difference between the two proposals, while only a fraction of the vast area of the whole Oregon country, was still of the utmost importance to the United States, of great value and very extensive; it comprised more than half the present State of Washington, together with that portion of Vancouver Island south of 49° north latitude.

Following the negotiations of 1826 and 1827, other questions, particularly that of the northeastern boundary, were more important in Anglo-American relations than that of the Oregon country; the problem of "joint occupation" presented little difficulty as long as the number of settlers was very small (Webster wrote on November 25, 1842, that there were then not more than seven hundred white persons in the whole Oregon country; Curtis, Life of Webster, II, 173–75).

The negotiations of 1842 which resulted in the Webster-Ashburton Treaty (see the notes to Document 99) dealt formally with every major question then pending between the United States and Great Britain except that of Oregon. The Oregon question was then the subject of conversations between Secretary of State Daniel Webster and Lord Ashburton, the British Plenipotentiary; and it was mentioned in the presidential message of August 11, 1842, with which the Webster-Ashburton Treaty was submitted to the Senate (quoted in

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vol. 4, pp. 393–98); but its adjustment was left to the future. The instructions of Ashburton did not permit him to go very far; they contemplated, in the first instance, a boundary following the course of the Columbia from its mouth to its confluence with the Snake River and thence due east to the Rocky Mountains; beyond that Ashburton was authorized to concede only as much as had been offered in 1824; even the British proposal of 1826 would have been beyond his authority (Library of Congress, Ashburton Papers, facsimiles from the Public Record Office, London, Foreign Office Records, vol. 5:378, instruction No. 2, February 8, 1842; hereinafter cited as "Ashburton Papers"; the instruction referred to is printed in Washington Papers, V, 218–19); perhaps the fact that the proposal of 1826 had been made was overlooked at London; certainly its terms were a surprise to Lord Aberdeen in the autumn of 1843, when one of the British Plenipotentiaries of 1826 did not recollect that offer and when Edward Everett, Minister at London, found it necessary to confirm the fact by reference to the protocol of December 1, 1826 (D.S., 51 Despatches, Great Britain, No. 69, December 2, 1843, and enclosure B, Everett to Aberdeen, November 30, 1843). Ashburton thought at one time that Webster would agree to the Columbia River boundary (Ashburton Papers, F.O. 5:379, despatch No. 2, April 25, 1842; there is no formal record of discussions of the Oregon question between Webster and Ashburton either by note or by protocol); but the return of the Wilkes expedition, with the report of Wilkes to the Secretary of the Navy "upon the Territory of Oregon", was both opportune and of influence (see *ibid.*, F.O. 5:379, despatches Nos. 9 and 10, June 14 and 29, 1842; the Wilkes report was sent to the Senate on July 1, 1842, but was not then printed; see Richardson, IV, 160, and Executive Journal, VI, 98–99; not until sixty-nine years later was that report, with a covering letter dated New York, June 1842, but without the maps which were with it, printed; see Congressional Record, XLVII, pt. 3, 2977–83, July 15, 1911; also printed in Oregon Historical Quarterly, XII, 269–99; for the views of Wilkes regarding the harbor at the mouth of the Columbia River, see Senate Document No. 475, 29th Congress, 1st session, serial 478; the account of Wilkes of his visit to the northwest coast is in Narrative of the United States Exploring Expedition, IV, chs. 9–14).

Negotiations during the Tyler Administration

On October 18, 1842, five days after the exchange of ratifications of the Webster-Ashburton Treaty, the British Government took the first steps toward the opening of negotiations at London on the subject of the boundary west of the Rocky Mountains (Senate Document No. 1, 29th Congress, 1st session, serial 470, pp. 139–40; see also British and Foreign State Papers, XXXIV, 49–50). President Tyler desired to send Daniel Webster to London on a special mission for that purpose, but an appropriation was refused in committee (Memoirs of John Quincy Adams, XI, 329–30, February 28, 1843; and as to the suggested tripartite treaty, involving a cession from Mexico of

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California down to 36° north latitude, and the line of the Columbia River for the Oregon boundary, see Tyler, Letters and Times of the Tylers, II, 260–61, and Memoirs of John Quincy Adams, XI, 347; see also Duniway, in American Secretaries of State and Their Diplomacy, V, 57–61, and Schafer, "The British Attitude toward the Oregon Question, 1815–1846", in American Historical Review, XVI, 293–94); perhaps Webster would have succeeded Edward Everett as Minister at London if Everett had accepted the mission to China (see Curtis, Life of Webster, II, 178–80); but Everett declined to go to China, and that mission was undertaken by Caleb Cushing (see the treaty with China of July 3, 1844, Document 109, and the notes thereto); on May 8, 1843, Webster resigned as Secretary of State, and not until more than two months thereafter did Abel P. Upshur take over that post (July 24, 1843, after service of a month *ad interim*, while Secretary of the Navy); thus before this Government was prepared to proceed, nearly a year had elapsed.

Under date of October 9, 1843, lengthy instructions for negotiation were sent by Secretary of State Upshur to Edward Everett, Minister at London (D.S., 15 Instructions, Great Britain, 144–72); a full power was also transmitted (D.S., 3 Credences, 54); the opening pages of the instruction were devoted to a synopsis of the documents and arguments of 1823–24 and 1826; these were followed by this paragraph, which, insofar as it states the British position, should be read with the formal record thereof made on December 16, 1826 (American State Papers, Foreign Relations, VI, 662–66):

> Such is the present position of this question. It has been fully discussed upon all the topics which belong to it, and upon all the facts which were then known, with no other result than to confirm the parties in their respective pretensions. There is no reason to doubt that both parties are, and have always been, sincerely desirous to settle the matter upon just principles; but it has been found impossible to bring them to any agreement upon the *facts* which enter into it as a question of right. Each party has contended for an exclusive right, so far as discovery could give it, and has insisted that the other had no right at all: the claim of each resulting from discovery, rests upon certain historical facts which are utterly denied by the other. There is evidence upon this point not possessed by former negotiators; but the difference of opinion between the two countries is so great, and has been so decisively expressed, that there seems to be some reason to apprehend that no future negotiation on the ground of mere discovery will be attended with better results than those which have heretofore failed. Nevertheless, this Government, not doubting the justice of our claim, is not without hope that it will be acknowledged by England; and, to that end, is disposed to renew the discussion of the question as one of mere right. The exclusive right of the United States to the whole territory between the 42d degree of latitude and the parallel of 54 degrees 40 minutes is believed to be now susceptible of very satisfactory proof.

The instruction then includes a statement of the case for the United States on the merits; on discovery and its results under the law of nations, the former rights of Spain, the Nootka negotiations and the Nootka Sound Convention of October 28, 1790, the voyages of various navigators, the Lewis and Clark expedition, and the settlements at Astoria and elsewhere, something like eight thousand words were written, followed by these concluding paragraphs:

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But we claim this territory upon other grounds. It lies contiguous to our settled country, and is a mere extension of our acknowledged boundaries. The natural spread of our population must cover it, without any direct effort, on our part, to settle or colonize it. It is important to our peace and security, that it should belong to us. It cannot be reasonably required of us to acquiesce in the settlement of a foreign Nation, which may become a hostile one, on an important part of our western border. In proportion as our population extends westward—and its extension is in the due course of nature and of absolute necessity—access to the Pacific will be absolutely indispensable to our prosperity. Our commerce in the Pacific Ocean is already of great extent and value, requiring the presence of armed vessels to protect it; and there is no port belonging to us to which our vessels, whether of commerce or of war, can resort, south of the Straits of Fuga. Hence that portion of the territory at least is indispensable to us. To England it is of little value. The fur trade, for the sake of which alone her settlements have been made, has ceased to be very profitable, in consequence of the destruction of the animals yielding that article; and no part of the land which she claims is of sufficient value to her for agricultural purposes to justify a serious contest for the possession of it. She can have no considerable settlement there, except as a colony; and the necessary poverty of such a colony, together with its great distance from the mother country, must render it a constant source of expense, to say nothing of its tendency to bring her into collision with other Powers. Even supposing, therefore, that the claims of the two countries to the territory, on the ground of discovery or settlement, are equally good, there is much stronger reason why it should belong to the United States than to England. Every useful purpose for which she can desire it, would be fully answered by the accommodations and privileges which a friendly country in possession of it would readily extend to her.

Such are our rights and our claims. How far the new proofs which it is now in our power to offer, may induce Great Britain to acknowledge them, I cannot undertake to say. If there should be, as heretofore, an insuperable difficulty in settling the controversy on the ground of mere right, the sincere desire which the President feels to preserve the existing harmony between the two countries will induce him to consent to terms of equitable compromise. The United States have offered to accept the 49th degree of north latitude as the boundary from the Rocky Mountains to the Pacific Ocean. This has been rejected by Great Britain, and she has offered in lieu of it an extension of the 49th degree of north latitude till it strikes the most northeastern branch of the Columbia, and thence along the middle of the channel of the Columbia to its mouth. This has been rejected by the United States. Great Britain has also offered the following boundary. Adhering to the Columbia river as the basis, she proposed to concede to the United States "the *possession* of Port Discovery, a most valuable harbor on the southern coast of De Fuca's Inlet; and to annex thereto all that tract of country comprised within a line to be drawn from Cape Flattery along the southern shore of De Fuca's Inlet, to Point Wilson, at the northwestern extremity of Admiralty Inlet; from thence, along the western shore of that inlet, across the entrance of Hood's Inlet, to the point of land forming the northeastern extremity of the said inlet; from thence, along the eastern shore of that inlet to the southern extremity of the same; from thence, direct to the southern point of Gray's Harbor; from thence, along the shore of the Pacific, to Cape Flattery, as before mentioned." This offer was promptly and very properly rejected by the United States. Exclusive of other objections to it, it left Great Britain in possession of the northern cape of the Columbia, which completely commands its entrance. To this the United States are not prepared to consent under any circumstances. The offer of the 49th parallel of latitude, although it has once been rejected, may be again tendered, together with the right of navigating the Columbia, upon equitable terms. Beyond this, the President is not now prepared to go. Nevertheless, you may propose or receive, subject to the approval of this Government, any other terms of compromise which in the progress of your discussions, may appear to promise a satisfactory adjustment of this important question.

You will receive, herewith, the necessary powers to negotiate upon the subject. If, however, the British Government prefers that the negotiation shall be conducted in Washington, that arrangement will be perfectly agreeable to the President.

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It will be seen that the British proposal of 1826 was definitely declared to be unacceptable; Everett was authorized to again offer the line of 49° north, with "the right of navigating the Columbia, upon equitable terms"; and the door was left open to "any other terms of compromise which . . . may appear to promise a satisfactory adjustment".

In the meantime, however, the decision had been reached at London to treat on the Oregon question at Washington; the reasons are thus given by Everett in his confidential despatch of November 2, 1843 (D.S., 51 Despatches, Great Britain, No. 61):

> By the steamer of the 16th October I had the honor to receive your despatch N^ro^ 62, enclosing a Full Power from the President to treat with this Government for the adjustment of the Oregon boundary, and containing your instructions on that subject. I lost no time in applying for an interview with Lord Aberdeen and saw him the first day of his return to town. On apprizing him of the disposition of the President to open a negotiation on this subject at London, Lord Aberdeen informed me that such an arrangement would have been altogether agreeable to him if somewhat earlier made, and reminded me that he had very often, in the course of the last winter, expressed the wish that the President would authorize me to treat on the subject. He had, however, lately come to a conclusion and taken a step, that made it necessary to treat upon the subject at Washington; this was the recall of Mr Fox and the appointment of a successor. Among the grounds for adopting this measure, was the belief that there would be decided advantage in putting the management of this subject into new hands, & consequently that had been and would be assigned as a leading reason for the contemplated change. This course he said had not been resolved upon, till they had entirely given up the expectation that I should be authorized to treat on this subject, not only in consequence of my not receiving powers; but Mr Fox having latterly written them, that the President had decided that the negotiation must be at Washington.
>
> It was as I informed you at the time, the purpose of Lord Aberdeen a few weeks ago, that Mr Fox should make an overture for the settlement of the question on the basis of Lord Ashburton's instructions; which I have been informed were to proceed upon the forty ninth parallel of latitude westward, till it strikes the North Westernmost branch of the Columbia river; and then follow that river to the ocean; and Mr Fox was accordingly so authorized and directed. In reply to the letters containing this authority, Mr Fox wrote back that he was not in possession of Lord Ashburton's instructions; and the determination above alluded to was then taken. Lord Aberdeen told me I must consider this communication as strictly confidential, for Mr Fox was not yet acquainted with his intended recal. I told Lord Aberdeen, that I must give you the information, to account for my not proceeding under the Full Power. He desired that I would request you to consider the information as confidential, till you should receive it from Mr Fox himself. I afterwards intimated to Lord Aberdeen that it was highly desirable that public intelligence should go to America by the steamer of the 4th, that he proposed to open a new negotiation at Washington on the subject of the Oregon boundary, as the information by that opportunity would be the last which would reach you, before the meeting of Congress and the delivery of the President's message.

None the less, Everett continued the "very frequent conversations" he had had with Aberdeen on the Oregon question; Everett wished to influence favorably the tenor of the instructions which were to be given; *inter alia* he urged "the extreme reasonableness of the proposal" of 49° north as the boundary; and he suggested that a modification of that line so as to leave the whole of Vancouver Island to Great

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Britain would perhaps be conceded (*ibid.*, No. 69, December 2, 1843, confidential). Aberdeen thus stated his views on the various arguments presented (*ibid.*):

> that these were grounds which in the main result had been long ago taken by the United States and rejected by England;—that the question was quite different from what it would have been if now presented for the first time;—and that it was impossible for the present ministry to accept what had been rejected in 1824 and 1826; that they did not suppose that we any more than themselves could now agree to terms which we had declined then; and that consequently there must be concession on both sides;—that they were willing to act on this principle and that we must do the same.

Conversations between Everett and Aberdeen along the same lines did not cease (D.S., 52 Despatches, Great Britain, No. 82, February 2, 1844; No. 106, April 1, 1844; 54 *ibid.*, No. 269, February 28, 1845); and while Aberdeen's first instructions, of December 28, 1843, permitted Pakenham to go beyond the British offer of 1826 only in respect of free ports south of 49° (Pakenham Papers, F.O. 115:83, instruction No. 10; see Washington Papers, V, 220, for a summary of that instruction), Aberdeen wrote to Pakenham on March 4, 1844, "to draw from the American negotiator a proposal" of the line of 49° to the sea (i.e., not across Vancouver Island), with free ports to Great Britain south of the line and common navigation of the Columbia (quoted by Schafer in "The British Attitude toward the Oregon Question, 1815–1846", in American Historical Review, XVI, 273–99; also quoted by Pakenham in a letter to Aberdeen of October 28, 1845, cited below); this, it may be observed, is (aside from the words about free ports) not far from Articles 1 and 2 of the Oregon Treaty; more in detail, the same bases were put forward in a letter of Aberdeen to Peel of September 25, 1844, from which one paragraph is excerpted (from Clark, "Aberdeen and Peel on Oregon, 1844", in Oregon Historical Quarterly, XXXIV, 236–40, where the letter appears in full):

> I believe that if the line of the 49th degree were extended only to the waters edge, and should leave us possession of all of Vancouver's Island, with the northern side of the entrance to Puget's Sound; and if all the harbors within the Sound, and to the Columbia, inclusive, were made free to both countries; and further, if the river Columbia from the point at which it became navigable to its mouth, were also made free to both, this would be in reality a most advantageous settlement.

Aberdeen wrote in the same letter that he was "convinced that this is the utmost which can be hoped for from negotiation" (*ibid.*); but Peel was not then willing to go so far (letter of Peel to Aberdeen, September 28, 1844, in *ibid.*; and see Merk, "The Oregon Pioneers and the Boundary", in American Historical Review, XXIX, 681–99); none the less, such an adjustment continued to be considered by Aberdeen (see his letters to Pakenham of April 18, 1845, and to Peel of October 17, 1845, cited and quoted in part below).

The decision to negotiate at Washington was one of the circumstances which caused delay; the British Plenipotentiary (Richard Pakenham) did not reach Washington until February 19, 1844; his

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credence, dated December 14, 1843, and the letter of recall of his predecessor, Henry Stephen Fox, dated November 15, 1843, were both presented on February 21, 1844 (Pakenham Papers, F.O. 5:404, despatch No. 4, February 27, 1844; D.S., Ceremonial Letters, Great Britain, 1815–65); Pakenham's first note was written on February 24; the tragic death of Abel P. Upshur, Secretary of State, took place on February 28; not until August 26, 1844, were the terms of the British proposal for a settlement communicated to Secretary of State John C. Calhoun; that proposal, which was at once declined, renewed that made by the British Plenipotentiary in 1826, with the added feature of an undertaking "to make free to the United States, any Port, or Ports, which the United States Government might desire, either on the Mainland, or on Van-Couver's Island, South of Latitude 49°" (D.S., 22 Notes from the British Legation); in respect of free ports Pakenham had authority to go further than he did; but he "saw at once that Mr Calhoun attached so little importance to the concessions of this kind, that the further concession which I was also contingently authorized to make respecting free Ports would be of no use" (Pakenham Papers, F.O. 5:426, despatch No. 53, May 13, 1845).

The arguments on the one side and the other, relating chiefly to the region south of the 49th parallel, were developed during conferences held in September 1844; the way was opened for a counterproposal from the United States; and in the meantime, on January 21, 1845, an offer of arbitration (in very general terms), made by the British Government on the previous January 15, was declined. No further steps were taken prior to the going into office of the Polk administration on March 4, 1845 (the protocols, arguments, and correspondence of the negotiation at Washington in 1844–45 during the Tyler administration are printed in Senate Document No. 1, 29th Congress, 1st session, serial 470, pp. 140–62).

Beyond the formal record of the Calhoun-Pakenham negotiations there is this account of their conversations off the record (Washington Papers, V, 222–23):

> In various informal conversations between Mr. Pakenham and Mr. Calhoun, when Mr. Calhoun insisted on the parallel of 49° as the very lowest terms which the United States would accept, Mr. Pakenham told him that, if he wished Her Majesty's Government even to take into consideration a proposal founded on that basis, it must be accompanied by some indications of a desire on the part of the United States Government to make some corresponding sacrifice to accommodate the interest and convenience of Great Britain; that Her Majesty's Government had already gone very far in the way of concession, while the United States Government had as yet shown no disposition to recede from their original proposal. To which Mr. Calhoun replied, on one occasion, that for his part he should have no objection to give up absolutely the free navigation of the Columbia, which had before been offered only conditionally; on another occasion, he said that if Great Britain would consent to the parallel of 49° on the Continent, perhaps the United States might be willing to leave to Great Britain the entire possession of Vancouver's Island, Fuca's Inlet, and the passage northwards from it to the Pacific remaining an open sea to both countries; but he never said that he would be ready to yield both these points. In fact, he said that he was not authorized to make any proposal of the kind, nor should he until he had ascertained that such an arrangement would find favor with the Senate.

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The foregoing statement was taken (slightly paraphrased) from the private and confidential despatch of Pakenham of September 28, 1844 (Pakenham Papers, F.O. 5:408). In the same despatch Pakenham reported his well-grounded fear "that there is no chance, whatever, of inducing Him, or any other American Negotiator to accept the line of the Columbia as a frontier".

Under the circumstances no consummation of the negotiations between Calhoun and Pakenham was possible; the Tyler administration was in its last few months of office; a presidential campaign was approaching; and Calhoun was not anxious to proceed. Pakenham thus stated his impressions (*ibid.*):

> I believe that Mr Calhoun is in earnest in wishing to settle the Oregon Question, quietly and peaceably, but being a vain and ambitious man, He wishes to settle it in a manner that shall gain Him credit in the eyes of His Countrymen—and He has Confessed to me, more than once, that He felt so mortified by the rejection of His Texas Treaty, that He was determined never to affix His signature to another Treaty, without a positive certainty of its being accepted by the Senate.

In the absence of any counterproposal from Calhoun and without further instructions than those of December 28, 1843 (cited above), Pakenham could do no more than was done. (There were later instructions, but they did not alter or go beyond those cited; Pakenham Papers, F.O. 115:85, Nos. 45 and 47, November 1 and 18, 1844.) By those instructions he was limited (territorially) to the British offer of 1826 plus the making of "all the Ports within de Fuca's Inlet, and South of the 49th parallel of latitude, free Ports"; and by August 29, 1844, Pakenham had let Aberdeen know that he agreed with Calhoun's view that no boundary south of that parallel would obtain the assent of the Senate, even if Calhoun could bring himself to accede to it (*ibid.*, F.O. 5:407, despatch No. 99). There were only two other courses within Pakenham's authority; the first of these was to propose arbitration, as he did, though feeling pretty well assured in advance that it would not be acceptable to either Calhoun or the Senate (*ibid.*, F.O. 5:409, despatch No. 140, December 29, 1844, and F.O. 5:424, No. 10, January 29, 1845). The other was to propose an extension of the "joint occupation" for a further term of ten years; and this was clearly impossible, if for no other reason, because of the sentiment in Congress, as Pakenham reported (*ibid.*, F.O. 5:409, despatch No. 134, December 12, 1844).

Evidence of the views of the House of Representatives was later disclosed by the passage by that body on February 3, 1845, by a vote of 140 to 59, of a bill "to organize a territorial government in the Oregon Territory, and for other purposes". By the terms of that long project, the territory to be organized was the entire region in dispute up to 54°40′ north latitude; and by section 43, the final section, the President was required "to cause due notice to be given to the British government of the desire and intention of the government of the United States to annul and abrogate" the convention of August 6, 1827 (Document 56; see Congressional Globe, XIV, 236, February 3, 1845, and appendix, 44).

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The bill failed, as no action was taken on it in the Senate (*ibid.*, 387–88, March 3, 1845); but Calhoun was chagrined at the action of the House, according to Pakenham's report of an interview at the former's residence on the day of the passage of the bill by that body (Pakenham Papers, F.O. 5:424, despatch No. 11, February 4, 1845):

> He seems to be a good deal mortified and disappointed by what has occurred in the House of Representatives, but He flatters Himself that the progress of the mischief may yet be arrested by a Message which He proposes to recommend to the President to send to Congress explaining the causes which led to the postponement of the Negotiation until a late period of last year, and expressing the expectation that the efforts of the two Governments to accomplish an amicable settlement of the question may yet be successful.[1]

The Oregon question was not new in Congress; it had been discussed there from time to time since 1819 (see "The Federal Relations of Oregon", by Lester Burrell Shippee, in Oregon Historical Quarterly, XIX, 111–33, 283–333; see also Carey, History of Oregon, 308–12, 482–92; references for the period 1828–46 are in Hasse, Index to United States Documents Relating to Foreign Affairs, II, 1178–96); but congressional and public interest had naturally grown along with the increasing American emigration to the Oregon country. (In "Influence of American Settlement upon the Oregon Boundary Treaty of 1846", by Leslie M. Scott, in Oregon Historical Quarterly, XXIX, 1–19, the numbers of immigrants from the United States are thus given: 137 in 1842; 875 in 1843; 1,475 in 1844; 3,000 in 1845; see also Merk, "The Oregon Pioneers and the Boundary", in American Historical Review, XXIX, 681–99).

The Oregon question naturally bulked much larger in American eyes than in British. On the map "contiguity" was just as relevant north of the 49th parallel as it was to the south; but both for that time and for the years to come, England appeared much more remote from the northwest coast of America than did the country whence led the Oregon Trail. From the history of the question there were inevitably points of honor or pride to consider; but the material interests of the one side and the other in the Oregon country were not large; to American sentiment, however, it was the future that counted, as these were interests of pioneers, aiding expansion of the Republic to the Pacific; and the only British settlements west of the Rocky Mountains were the establishments of the Hudson's Bay Company, enjoying a grant of trade (exclusive as to British subjects) in the region and exercising there extensive powers of government. (For the grant of May 30, 1838, and the charter of the company of May 2, 1670, see Great Britain, House of Commons, Accounts and Papers, XXVIII, papers relative to the Hudson's Bay Company ordered printed August 8, 1842; by 1845 the Hudson's Bay Company had "established their principal settlement on Vancouver's Island"; see the letter of Lord Aberdeen to Sir Robert Peel of October 17, 1845, cited and quoted in part below; the interests of the company

[1] For the message of President Tyler of February 19, 1845, see Richardson, IV, 361–62.

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and its "shift of base" are both carefully examined by Merk in "The Oregon Pioneers and the Boundary", American Historical Review, XXIX, 681–99; for detailed statements of the properties of the Hudson's Bay Company and of the Puget's Sound Agricultural Company on the mainland south of the 49th parallel, see their memorials, of April 8 and 10, 1865, respectively, presented to the Commissioners under the treaty of July 1, 1863, in the papers of the "British and American Joint Commission for the Final Settlement of the Claims of the Hudson's Bay and Puget's Sound Agricultural Companies".) Lord Aberdeen could write of the Oregon question that "the interests involved are of no great moment" (letter to Peel of October 17, 1845, above mentioned); but any such opinion was impossible at Washington.

The Proposal of President Polk

The Oregon question was becoming more acute; the Democratic Convention in May 1844 had resolved "That our title to the whole of the territory of Oregon is clear and unquestionable; that no portion of the same ought to be ceded to England or any other power" (Niles' Weekly Register, LXVI, 227, June 8, 1844); accordingly, "fifty-four forty or fight" was a slogan during the presidential campaign of that year; and when President Polk in his inaugural address of March 4, 1845, quoted the words "clear and unquestionable" (Richardson, IV, 381), popular feeling was aroused in both countries; the possibility of war was openly discussed; and it was not forgotten that in the previous year James Buchanan, then Senator from Pennsylvania, and from March 6, 1845, Secretary of State, had said (on March 12, 1844; Congressional Globe, XIII, appendix, 345):

> Thus the territory in dispute embraces that vast region extending along the Pacific ocean, from the forty-second degree of north latitude to fifty-four degrees and forty minutes north, and running east along these respective parallels of latitude to the summit of the Rocky mountains. Now, sir, to the whole of this territory—to every foot of it—I believe most firmly that we have a clear and conclusive title.

The inaugural address of Polk was deemed by Aberdeen to have "impressed a very serious character on our actual relations with the United States"; that portion of former instructions to Pakenham which authorized an extension for a fixed term of years of the convention of August 6, 1827, was canceled; and the danger that the termination of the convention of 1827 (by notice from the United States) would be followed by "a local collision" which might "not improbably lead to war itself", was in mind (Aberdeen to Pakenham, April 6, 1845; Pakenham Papers, F.O. 115 : 88, instruction No. 21; Washington Papers, V, 223–24, but dated April 3, 1845). The language used by Sir Robert Peel in the Commons and by the Earl of Aberdeen in the Lords on April 4 was appropriate to a situation deemed to be grave (see Hansard, 3d series, LXXIX, 120–24, 193–99); and Aberdeen thus wrote to the Queen on March 27 (Selections from

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the Correspondence of George, Earl of Aberdeen, 1845, 102–3; a copy of this volume is in the Library of Congress):

> The language of the new President is menacing, but he will have been made fully aware of the determination of Your Majesty's Government to uphold at all hazards the rights and honour of this country.

Pakenham, however, soon learned that the negotiation was not to be suspended. His first two conversations with James Buchanan, Secretary of State, are thus reported (Pakenham Papers, F.O. 5 : 425, despatch No. 40, March 29, 1845):

> Since the Installation of the New Government, I have had two conversations with Mr Buchanan, Mr Calhoun's successor in the office of Secretary of State.
>
> The first was on the occasion of a visit of ceremony which I paid Him on receiving official notice of His appointment, on which occasion He was profuse in professions of His desire to contribute by every means in His power to the continuation of a good understanding with England. "Whatever opinions I "may have expressed" He said "in the Senate or elsewhere of an unfriendly "character towards England, you will find that while I remain in this office, "neither Her Majesty's Government, nor Yourself, shall have the least cause "to complain of me."
>
> I am very unwilling, My Lord, to say anything that might raise a doubt in the mind of Her Majesty's Government as to the sincerity of such a declaration, made, as it was, with every appearance of earnestness and good will, but I must observe, that if Mr Buchanan really acts up to His professions in this respect His conduct will exhibit a very remarkable contrast to that observed by Him of late years in every thing relating to intercourse with England.
>
> At our second interview the subject of Oregon was introduced, when I took occasion to inform Him of the Instructions which I had lately received from Your Lordship (those contained in Your Lordship's dispatch No. 8 of 3. Instant) again to press on the Government of the United States, the expediency of resorting to a settlement by arbitration, as the only practicable mode of finally adjusting our differences on this important question.
>
> Mr Buchanan observed that He had not yet had an opportunity of ascertaining what might be the views of the President on this particular point connected with the Oregon Question—but He said He would not fail to take advantage of the earliest moment to direct the President's attention to it.
>
> For His own part although He did not seem to be much taken with the idea of an arbitration He did not appear prepared altogether to reject it,—what He said was, that He did not at all despair of effecting a settlement of the question by Negotiation, "by adopting" to use His own words "the principle of giving and taking".
>
> Perhaps his intention may be to propose the parallel of 49. to the Sea, as a Boundary, leaving to Great Britain the entire possession of Van Couver's Island, with an agreement for the free Navigation of the Columbia River.
>
> If such an arrangement would suit the views of Her Majesty's Government for the sake of getting rid of the dispute, I am quite sure, My Lord, that the only way to obtain it will be to wait till it is proposed by the United States' Government, for if that proposal or any other, involving Concession on the part of Great Britain were to originate with us, I have not the least doubt that it would be rejected, in the hope of obtaining ultimately still greater advantages.

Aberdeen welcomed the news that the negotiations were to go on; but in the answering instruction he followed lines previously laid down and was vague as to the attitude to be taken toward such an American proposal as Pakenham had suggested as possible (*ibid.*, F.O. 115 : 88, instruction No. 22, April 18, 1845):

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It now appears that Mr Buchanan whom we had always considered as one of the most decided opponents of any compromise respecting the Oregon Territory has expressed himself to you as prepared to adopt "the principle of giving and taking". It is not improbable therefore that he may submit to you some proposal of compromise on the part of his Government. We entirely concur in your opinion that it may be wise to withhold any further Proposition on our part until we shall have received Mr Buchanan's Proposal, which will probably be too unfavourable to be accepted by us. You might, then, as a counter-proposal, inform Mr Buchanan that, in addition to the Terms already offered by us, we are prepared to allow all the Ports within the Disputed Territory South of 49° North Latitude, whether on the main land or on Vancouver's Island, to be made perpetually free Ports.

Should no proposal be put forward by Mr Buchanan, you will use your own discretion as to originating the offer respecting the free Ports. In order to prove to the United States' Government, and to place on record the extent to which Her Majesty's Government are disposed to carry their desire to arrive at an amicable adjustment, they would wish that, if it can be conveniently introduced, that proposition should be submitted to Mr Buchanan. Of this, however, they leave you to be the Judge.

Beyond this degree of compromise, Her Majesty's Government could not consent to go. Should you therefore have an opportunity of making such a Proposal, and should it be rejected, you will have no alternative but to recur to the demand for an Arbitration.

But with the foregoing instruction went a private letter from Aberdeen of the same date, referring thus to the proposal envisaged by Pakenham (Selections from the Correspondence of George, Earl of Aberdeen, 1845, 141):

I am glad to receive your report of Mr. Buchanan's language, and hope that the spirit of his conduct will be found in unison with it. If Mr. Buchanan should propose an extension of the 49th parallel to the sea, as the line of boundary, leaving us in possession of the whole of Vancouver's Island, and the free entrance into the Straits of Juan de Fuca; although I would put forward in answer our proposal described in my despatch this day, I should not like to regard his proposal as perfectly inadmissible. It is possible that by some modifications it might be accepted, although I do not think it at all likely, and of course you will give no encouragement to the notion, but recur to arbitration in the event of our terms being rejected. At the same time, you might send Mr. Buchanan's proposal, if made, for the consideration of Her Majesty's Government.

I think it should be clearly understood that the navigation of the Columbia should be common to both parties, and the Ports within the Straits of Juan de Fuca, and south of latitude 49° should be free Ports, by whomsoever they might be occupied.

It is to be noted that the terms outlined in the foregoing letter hardly vary from those of the letter of Aberdeen to Pakenham of March 4, 1844, cited above.

In conversations of May 12 and May 28 Pakenham was informed by Buchanan that a reference of the Oregon question to arbitration was not favored by the President and that an American proposition for settlement would be made but would not be presented until the successor to Edward Everett at London was ready to proceed to his post (Pakenham Papers, F.O. 5 : 426, despatches Nos. 53 and 60, May 13 and 29, 1845). Louis McLane, who was commissioned as Minister at London on June 16, 1845, sailed on the packet of July 16 and reached London on July 31 (Historical Society of Pennsylvania,

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Buchanan Papers, copy of a letter of McLane to Polk of August 4, 1845, quoted in part below).

The American proposal was made in a note dated July 12, 1845, delivered by the Secretary of State to the British Minister on July 16 (D.S., 7 Notes to the British Legation, 76–89; Senate Document No. 1, 29th Congress, 1st session, serial 470, pp. 163–69); the delay of four days (from Saturday to Wednesday) in the delivery of the note, whether so calculated or not, made it impossible for Pakenham to send a copy to Aberdeen by the packet of July 16, on which McLane sailed; the latter, as will be seen, had a copy with him; it was Pakenham's despatch of July 29 (Pakenham Papers, F.O. 5 : 427, No. 87) which enclosed to Aberdeen copies both of the American proposal and of Pakenham's rejection thereof; Pakenham knew by July 13 that he was to receive the proposal "in the course of next week"; he took for granted that McLane was fully informed of its terms; and he considered that Buchanan "may have thought it politick to keep back His promised communication until after Mr McLanes departure, in order that that Gentleman may have an opportunity of conversing with Your Lordship respecting it, before it is formally submitted for Your Lordship's Consideration" (Pakenham Papers, F.O. 5:427, despatch No. 79, July 13, 1845).

In his note Buchanan stated that he "now proceeds to resume the negotiation on the Oregon question at the point where it was left by his predecessor"; the question of title, particularly to "the territory north of the valley of the Columbia", was argued; the effect of the Nootka Sound Convention of October 28, 1790, was discussed, and it was said that that convention was temporary in its nature and was terminated by the war between Great Britain and Spain which began in 1796. The proposal of the United States was thus set forth:

> In view of these facts, the President has determined to pursue the present negotiation to its conclusion, upon the principle of compromise in which it commenced, and to make one more effort to adjust this long-pending controversy. In this determination he trusts that the British Government will recognise his sincere and anxious desire to cultivate the most friendly relations between the two countries, and to manifest to the world that he is actuated by a spirit of moderation. He has, therefore, instructed the Undersigned again to propose to the Government of Great Britain that the Oregon territory shall be divided between the two countries by the forty-ninth parallel of north latitude from the Rocky Mountains to the Pacific Ocean, offering, at the same time, to make free to Great Britain any port or ports on Vancouver's Island south of this parallel which the British Government may desire. He trusts that Great Britain may receive this proposition in the friendly spirit by which it was dictated, and that it may prove the stable foundation of lasting peace and harmony between the two countries. The line proposed will carry out the principle of continuity equally for both parties, by extending the limits both of ancient Louisiana and Canada to the Pacific along the same parallel of latitude which divides them east of the Rocky Mountains; and it will secure to each a sufficient number of commodious harbors on the northwest coast of America.

Thus the American proposal went beyond that of 1826 in its offer of free ports on Vancouver Island; but, on the other hand, in its omission of any reference at all to rights of navigation of the Columbia River, it was more restricted.

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On the same date as that of the American proposal (July 12, 1845) instructions were written by Secretary of State Buchanan to Louis McLane, who had been appointed to succeed Edward Everett as Minister at London; the negotiations of 1818, 1824, and 1826 were reviewed; reference was made to the instructions of Secretary of State Livingston to Martin Van Buren, Minister at London, of August 1, 1831; a copy of the note to Pakenham of July 12, 1845, was enclosed; the attitude of Polk against the concession of any privilege of free navigation of the Columbia River was strongly stated; it was evidently thought that the American proposal would be discussed at London; and the final paragraphs were these (D.S., 15 Instructions, Great Britain, 271–81; Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 27–32):

> Had this been a new question, you are fully aware that the President never would have presented such a proposition; but it must not be forgotten that the American Government never dies, although the agents who administer it are perpetually changing. Its course of policy towards foreign nations should not change with every changing administration, but ought to be uniform and consistent, unless for reasons of imperative necessity.
>
> From what has been said, you will perceive how wholly impossible it is for the President to accept any terms of compromise which would bring the British south of the parallel of 49°; and this you may intimate to the British Ministers in conversation, should you deem it wise under all the circumstances. The only exception to this rule which could possibly be made might be the concession, for an adequate equivalent, of the small cap of Vancouver's Island, south of this latitude, which would be of no importance to the United States, whilst it is of considerable value to Great Britain.
>
> You will enforce our proposition upon the British Ministry with all the enlightened ability of which you are so eminently the master. Should it be rejected, the President will be relieved from the embarrassment in which he has been involved by the acts, offers, and declarations of his predecessors. Afterwards, if the difficulty can only be resolved by the sword, we may then appeal with confidence to the world for the equity and justice of our cause, and may anticipate the smiles of Heaven upon the right.

Comparing the terms of the American offer of July 12, 1845, with the clauses of the Oregon Treaty as signed, it will be seen that the differences of moment are two only (for Articles 3 and 4 of the treaty, dealing with the possessory rights of British subjects and of the Hudson's Bay Company, and with the property of its subsidiary, the Puget's Sound Agricultural Company, could hardly be regarded as contentious; see the motion of Senator Edward A. Hannegan, of Indiana, in Executive Journal, VII, 94–95); the treaty goes beyond the offer in making provision (albeit somewhat limited in scope) for the navigation of the Columbia River (Article 2); and by the treaty the "small cap of Vancouver's Island", which had been said to be "of no importance to the United States", is north of the line of boundary.

The proposal of this Government of July 12, 1845, was rejected by the British Minister, without reference to his Government, by his note of July 29 (D.S., 23 Notes from the British Legation; Senate Document No. 1, 29th Congress, 1st session, serial 470, pp. 170–77).

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That note (presented on July 30; see Pakenham Papers, F.O. 5 : 429, despatch No. 115, October 29, 1845, enclosure) added "a few observations in reply" to the arguments of Buchanan; the Nootka Sound Convention of 1790 was said to be "in full and complete force up to the present moment"; the merits of the respective claims, insofar as they rested on "discovery, exploration, and settlement", were compared; the "strongest possible claim to the exclusive [British] possession" of Vancouver Island was maintained; it was thought that the facts were not "of that complete and exclusive character which would justify a claim [by the United States] to the whole valley of the Columbia"; and there followed these paragraphs:

> After this exposition of the views entertained by the British Government respecting the relative value and importance of the British and American Claims, The American Plenipotentiary will not be surprised to hear that the Undersigned does not feel at liberty to accept the proposal offerred by the American Plenipotentiary for the settlement of the Question.
>
> This proposal in fact offers less than that tendered by the American Plenipotentiaries in the Negotiation of 1826, and declined by the British Government.
>
> On that occasion it was proposed that the Navigation of the Columbia should be made free to both Parties.
>
> On this nothing is said in the proposal to which the Undersigned has now the honor to reply, while with respect to the proposed freedom of the Ports on Vancouver's Island, south of latitude 49° the facts which have been appealed to in this paper, as giving to Great Britain the strongest claim to the possession of the whole Island would seem to deprive such a proposal of any value.
>
> The Undersigned therefore trusts that the American Plenipotentiary will be prepared to offer some further proposal for the settlement of the Oregon Question, more Consistent with fairness and equity and with the reasonable expectations of the British Government, as defined in the statement marked D [printed in Senate Document No. 1, 29th Congress, 1st session, serial 470, pp. 153–58], which the Undersigned had the honor to present to the American Plenipotentiary at the [e]arly part of the present Negotiation.

Pakenham subsequently argued to Buchanan, without success, that "he had not rejected our proposition, but had merely refused to accept it" (D.S., 15 Instructions, Great Britain, 266, November 5, 1845); but the unhappy final paragraph quoted was regarded as a rejection of the American offer, both at London and at Washington (indeed, Pakenham himself wrote in his despatch of July 29, 1845, above cited, that he had "felt obliged at once to reject" the proposal without referring it to London for consideration); and its wording was thought by Polk to be, "to say the least of it, scarcely courteous or respectful" (Polk's Diary, I, 2).

Withdrawal of the American Proposal

The American answer of August 30, 1845, to the British note of the previous July 29 was one which Pakenham naturally communicated to Aberdeen with "great concern" (Pakenham Papers, F.O. 5:428, despatch No. 95, September 13, 1845); it embodied a reasoned argument for the American title to the Oregon country, the most impressive presentation of the case that had been written; it then adverted to "the reasons which actuated the President to offer a proposition

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so liberal to Great Britain", and thus concluded (D.S., 7 Notes to the British Legation, 89–121; Senate Document No. 1, 29th Congress, 1st session, serial 470, pp. 177–92):

> And how has this proposition been received by the British Plenipotentiary? It has been rejected without even a reference to his own Government. Nay, more, the British Plenipotentiary, to use his own language, "trusts that the American Plenipotentiary will be prepared to offer some farther proposal for the settlement of the Oregon question, *more consistent with fairness and equity, and with the reasonable expectations of the British Government.*"
>
> Under such circumstances, the Undersigned is instructed by the President to say, that he owes it to his own country, and a just appreciation of her title to the Oregon territory, to withdraw the proposition to the British Government which had been made under his direction; and it is hereby accordingly withdrawn.
>
> In taking this necessary step, the President still cherishes the hope that this long-pending controversy may yet be finally adjusted in such a manner as not to disturb the peace or interrupt the harmony now so happily subsisting between the two nations.

The note of August 30, 1845, withdrawing the American offer of the previous July 12, was written and delivered by the express direction of President Polk; James Buchanan, Secretary of State, was not in accord with the policy; "he did not think it was the part of wise statesmanship to deliver such a paper in the existing state of our relations with Mexico"; Buchanan urged delay, at least "until late in September"; but Polk had determined on his course and was not to be moved; and he thought that it would be for the British Government to decide on the next step: "Let our proposition be absolutely withdrawn & then let the Brittish Minister take his own course. If he chooses to close the negotiation he can do so. If he chooses to make a proposition he can as well do it without our invitation as with it. Let him take the one course or the other, the U. States will stand in the right in the eyes of the whole civilized world, and if war was the consequence England would be in the wrong." Polk saw "no necessary connection between the two questions" of Oregon and Mexico; "we should do our duty towards both Mexico and Great Brittain and firmly maintain our rights, & leave the rest to God and the country." The answer of Buchanan to this was that "he thought God would not have much to do in justifying us in a war for the country North of 49°" (see Polk's Diary, I, 1–12, *passim*, August 26–30, 1845). It was the "important conversation" which "took place in Cabinet" on August 26, 1845, which moved Polk to keep his diary (*ibid.*, II, 100–1).

Before the decision on the character of the American note of August 30, 1845, had been taken, Polk had received (on August 19) his first news from Louis McLane at London, accurately estimating the attitude of the British Government. In that letter of August 4 (Historical Society of Pennsylvania, Buchanan Papers) McLane wrote as follows:

> Meantime I have approached such sources as have been accessible to me; and I have also conversed with Mr Bates from whom the information in Mr Sturgis's letter to Mr Bancroft proceeded. His means of information not less than his good sense & devotion to our Country entitles his communications to great

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respect. He was mainly instrumental in procuring the article from Mr Senior with which you are already acquainted & of submitting it previously to its publication to Lord Aberdeen, who, it is pretty certain, gave it his approbation.[1]

The result of all I have learned is that this Government is earnestly desirous of adjusting the Oregon question, & willing to do so upon liberal terms. *Their chief difficulty arises from the opposition & influence of the Hudson's Bay Company.*

The Government will be disposed, I infer, under these circumstances, to adopt the 49th parallel to the straits of Fuca, and thence by a line giving the whole of Vancouver's island to the British side; but will insist, at the same time, upon a continuance for a longer period of existing privileges to the Hudson's Bay Company. The duration of this period, it is supposed, will form the most difficult point of the compromise.

Standstill of the Negotiations

The rejection, followed by the withdrawal, of the American proposal of July 12 brought the negotiations to a stand, a result which was quite contrary to the wishes of the British Government; the course of Pakenham was not approved by his superiors; the "regret" of Her Majesty's Government that the American proposal had been rejected by the note of July 29 and had not been referred to London was stated in two instructions (Pakenham Papers, F.O. 115:89, Nos. 64 and 72, October 3 and November 28, 1845; Pakenham's official apologia is in *ibid.*, F.O. 5:429, despatch No. 114, of October 29; there are also private letters which are in Selections from the Correspondence of George, Earl of Aberdeen, 1845: Aberdeen to Pakenham, October 3, 1845, pp. 326–28; Pakenham to Aberdeen, October 28, 1845, pp. 482–84; Aberdeen to Pakenham, December 3, 1845, pp. 507–9; the subject was discussed in writing with Sir Robert Peel; see *ibid.*, 328–29, Peel to Aberdeen, October 2, 1845, thinking the tone of Pakenham's note "needlessly harsh and peremptory"; Aberdeen to Peel, October 3, 1845, pp. 329–31; Peel to Aberdeen, October 3, 1845, p. 331; Aberdeen to Peel, November 21, 1845, p. 485; Peel to Aberdeen, November 22, 1845, pp. 485–86).

The expressed views of Lord Aberdeen were thus described by Louis McLane, Minister at London, in his despatch of October 3, 1845 (D.S., 56 Despatches, Great Britain, No. 9):

I received on the 29th ultimo, your despatch, Number 9, dated the 13th September, transmitting a copy of your last note (30th August 1845) to Mr Packenham relative to the Oregon question.

On the day following, I was invited by Lord Aberdeen, in the note hereto appended, to an interview at his house in Argyll street, which I granted accordingly. The object of the interview, as I had anticipated related exclusively to the posture in which the negotiations between the two governments had been placed by your note of the 30th August to Mr Packenham, and the withdrawal of the proposition, which the President had previously directed.

[1] Joshua Bates, of London, an American born and reared in New England, was a member of the firm of Barings. William Sturgis, of Boston, had there delivered a lecture on the Oregon question on January 22, 1845, which was subsequently published in a pamphlet; he was related to George Bancroft, then Secretary of the Navy. The article by Nassau W. Senior, notable British economist and friend of Bates, was in the London Examiner for April 26, 1845. See Moore, International Arbitrations, I, 224–25; Washington Papers, V, 34–38; and Merk, "British Government Propaganda and the Oregon Treaty", in American Historical Review, XL, 38–62.

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Lord Aberdeen not only lamented, but censured the rejection of our proposition by Mr Packenham without referring it to his Government; and frankly confessed the embarrassing position in which the withdrawal of the proposition by the President had placed this Government. He also stated that if it were the desire or intention of the President, to terminate the negotiation at its present stage, without further effort towards an amicable adjustment, Mr Packenham's treatment of our proposition, had afforded him a good opportunity of doing so, and that, in the withdrawing our proposition, he had acquired in this respect, a decided advantage.

He stated that if Mr Packenham had communicated the American proposition to the government here, as he was expected to have done, he, Lord Aberdeen, would have taken it up as the basis of his action, and entertained little doubt that he would have been enabled to propose modifications which might ultimately have resulted in an adjustment mutually satisfactory to both Governments; and he observed that if it had not been withdrawn, after Mr Packenham's note, he would have disavowed his rejection, and proceeded to treat it as an open proposition. He further said that he would be disposed even now, to do in substance the same thing, and submit a new proposal, if he could be certain that in withdrawing the proposition the President did not intend to terminate the negotiation, and to use Mr Packenham's mistake for that purpose. His great desire obviously was to escape from the difficulty, which in his view, the President's withdrawal of our proposition had interposed to a continuance of the negotiation, by a new proposal from this Government; and although, he did not state particularly what course it would be his duty to take, if this difficulty could not be surmounted, he intimated that, a last resort towards an amicable adjustment might probably be a proposition for arbitration. He did not conceal that his application to me was to ascertain officially the President's real intentions, and the motives by which, in withdrawing the proposition, he was actuated.

Although I had no right absolutely to conclude that the President had changed the views which at the time of my departure from the United States, he entertained as to the terms upon which he might ultimately assent to adjust this controversy; and although in your last note to Mr Packenham you repeated the President's hope that it might yet be finally adjusted in a manner not to disturb the peace, or interrupt the harmony subsisting between the two nations—which would almost necessarily imply further negotiation—, and in your private note [not, it seems, now available] to me expressed the opinion that a conciliatory course on the part of both Governments would be necessary for the preservation of peace; nevertheless, without a clearer insight into the actual state of affairs at home, and a better knowledge of the influence of public sentiment in the United States upon the President's mind, than your private letter afforded me; and in the absence not only of any positive instruction, but of an intimation of the course which in the present unexpected emergency I should be expected to pursue, I did not feel authorized to take any step, or say anything here, which could possibly interfere with or weaken any advantage the President had intended, or might desire to avail himself of, from the posture in which he had been placed. I thought it best to leave him entirely uncommitted to any course that might not be fairly deducible from your note to Mr Packenham, and at the same time, without inviting or suggesting to this Government to offer a new proposal, afford it no opportunity from my silence, or from anything I might say of throwing upon the President the responsibility of terminating the negotiation, if he should not desire to assume it.

I accordingly stated that I was compelled to regard the rejection of our overture by Mr Packenham, without reference here, and the course which the negotiation in consequence had taken at Washington, as dispensing, at least for the present, with any agency I might have been expected to take in it; that my recent despatches had acquainted me with the actual state of things, without contemplating, that in the present juncture, my interference could be needed or useful; and that anything I could say under these circumstances would not only be informal and unauthorized, but in a great degree conjectural.

I did not fail, however, to take the occasion to press upon Lord Aberdeen, the great difficulties with which, in the present state of public sentiment in the

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United States, the President could concede, even, that which he had done in the proposition he had authorized. I adverted at some length, and with what force I could employ to the indignant feeling, produced with intelligent and patriotic men of all parties in the United States, by the interference of the Governments of Great Britain and France in opposition to our negotiations with Texas; and to the unsparing, and intemperate, and very reprehensible abuse incessantly poured out, against the Government, and people of the United States, by the whole English press, without exception. I assured him, that he could not be too forcibly impressed, with the effects which this treatment had already produced in the mind of every man among us, who had any attachment to his country, and to its institutions, and of the utter impossibility that these effects could be disregarded by any administration in its negotiations with this Government. When, therefore, under such circumstances, a concession offered by the President was rejected, and in a manner so abrupt and unceremonious, without even an attempt to modify its terms, it was difficult to imagine any other course that he could have taken, consistent with his own dignity, and the rights of his country. I proceeded to state, at the same time, that I had no reason to conclude, or to beleive, that in taking this necessary step, the President supposed that the withdrawal of his offer would preclude this Government from making a new proposal, if it should think proper to do so.

At the instance of Lord Aberdeen, in the interview of Wednesday [October 1, 1845], it was understood, that we should reflect upon the subject until the day following, and our conversation was accordingly resumed yesterday at the Foreign office. Subsequent reflection had not varied the views, I had previously felt it my duty to present, and I had, therefore, only to restate them.

The subject in the interval had evidently been one of consultation with Sir Robert Peel; and Lord Aberdeen stated that for the present, he should in his public despatch to Mr Packenham, disapprove of the course he had adopted in regard to the proposition offered in your first note, and leave him in informal or private conversations with you, to ascertain, if practicable, the best mode, in which, if at all, the negotiation may be resumed, or, with what expectation of an amicable arrangement, some new proposal may be originated.

I deem it my duty to state, that from my intercourse with Lord Aberdeen, as well before, as since the date of your despatch Number 9, I have been led to suppose that this Government is sincerely disposed to pursue a conciliatory course, and is anxious to adjust the Oregon question upon terms mutually reasonable and satisfactory to both parties. The solicitude felt at the present posture of the negotiation would seem to make this clear. The frankness, and sincerity for which I have always found Lord Aberdeen distinguished forbid me to doubt his strong and uniform professions; and, in our interview yesterday, he assured me that in all his feelings Sir Robert Peel fully participated.

It was quite obvious to me, that Lord Aberdeen had become convinced in his own mind, though in what way, I do not pretend to conjecture, that the terms which it was his intention ultimately to propose, or assent to, would be accepted by the President, and that on this account, he particularly regretted the interruption in the negotiation without affording an opportunity for that purpose.

Although it was impossible for me, in the present posture of the affair, and in my peculiar situation to attempt to draw from him a distinct avowal of the terms he intended to propose, and what he hoped would be acceptable, I beleive they are such, as I stated, in my first letter to the President [of August 4, 1845, cited and quoted in part above], after my arrival in London; and I still beleive, that if such should be satisfactory at home, they might be obtained, without great difficulty, in the progress of the negotiation, if the President should think proper to continue it. That the proposition recently rejected, by Mr Packenham, would be ultimately accepted without modification, I have not the least ground to beleive or conjecture.

When the foregoing report of McLane of his conversations with Aberdeen was read in Cabinet (October 21, 1845), Polk remained "well satisfied with the ground we occupied on the subject"; but he made one highly important statement to the effect that if any new "propo-

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sition" were made by the British Government, "he would either reject it, or submit it to the Senate for their advice before he acted on [it], according to its character"; the procedure of the following June was thus early announced; but when Buchanan, sensing at once a possible way out, inquired if he might inform the British Minister of the decision to submit to the Senate "a proposition of a character to justify it", Polk refused permission; and the British Government "would not, he was sure, make any new proposition which we could accept" (Polk's Diary, I, 62–64).

The conflict of opinion between the President and the Secretary of State continued; Polk, in a conversation with Senator Thomas H. Benton, of Missouri (who believed in the British title to the mainland north of 49°), said that he "was now disposed to assert our extreme right to the whole country"; the view of Polk, on the basis of "the proposition having been rejected by the Brittish Minister", was wholly unchanged by the statements made by Aberdeen to McLane; Buchanan favored a conciliatory course; he "repeated what he had often before said, that he was willing to settle the question [at] 49° degrees of North Latitude yielding the Cap of Vancouver's Island to Great Brittain but not the free navigation of the Columbia River" (*ibid.*, 69–72, 75–76, October 24 and 28, 1845).

The Note Withdrawn and the Note Not Delivered

Aberdeen sought for a way to resume the negotiations; in his instruction of October 3, 1845 (Pakenham Papers, F.O. 115 : 89, No. 64), he wrote to the effect that a renewal of the offer to refer the Oregon question to the arbitration "of some independent and friendly State" seemed perhaps the only course open; but the possibility of obtaining the withdrawal of the two notes (Pakenham's of July 29 and Buchanan's of August 30, thus leaving the American proposal of July 12 as the latest communication between the Governments) was discussed by Aberdeen both orally and in writing with Sir Robert Peel (Selections from the Correspondence of George, Earl of Aberdeen, 1845, 328–31); the latter had some doubts, but approved the private letter to Pakenham which Aberdeen wrote in the following terms on the date of the instruction last mentioned (*ibid.*, 326–28, October 3, 1845):

> From the present state of the Oregon negotiation, I fear that we are almost under the necessity of regarding it as entirely closed; indeed it is clear that unless some vigorous effort be made to revive it, this must inevitably be the case.
>
> I have officially expressed to you to-day my regret that you did not accept Mr. Buchanan's proposal for the purpose of reference to your own Government. You might have added that, although you had no authority to agree to such a proposal, and could not anticipate its success here, nevertheless the matter was too important finally to decide without giving us an opportunity of considering it, more especially as modifications might possibly be suggested which would render the proposal more acceptable. This would have done no harm, and would have left the matter in our own hands to deal with as should be found most expedient.
>
> If Mr. Buchanan had replied to your note by simply refusing to make any further concession, we might have taken possession of his offer, and have replied by making some counter-proposition of our own. This would have been the natural

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and regular course; but as Mr. Buchanan has now withdrawn his former proposal altogether, in consequence of its summary rejection by you, we are left without any certain basis upon which to proceed.

You appear to think that the United States Government expect much from Mr. M'Lane in the management of this negotiation; but Mr. M'Lane assures me that he is entirely without instructions. He is most anxious to contribute to the friendly settlement of the question, and, indeed, only came here in the hope of doing so. He therefore deeply regrets the present posture of the affair; and he tells me that the President and Mr. Buchanan are equally distressed at the character which it has now assumed. Should this really be the case, there is a possibility of the mischief being repaired, and the whole subject replaced in its former position. But this will require much delicacy and discretion in the management, and must not be attempted without reasonable hope of success.

After a good deal of reflection, it appears to me that the best and only chance of removing our present difficulty will be for you to go at once to Mr. Buchanan, and to tell him fairly that your own Government have regretted the course which you had adopted in rejecting his proposal, without transmitting it home for their consideration. You may add that you are ready to withdraw your former note of rejection, and to address another to him in place of it, of the nature which I have already pointed out. In this case he will of course withdraw his reply, and the negotiation will then resume its natural progress, as if nothing of the kind had occurred.

It will be essential, however, not to let them suppose that Mr. Buchanan's proposal will be accepted by us; on the contrary, they should understand that it will not; but it forms a basis which admits of such modifications as may possibly lead to a settlement, should both parties be really desirous to arrive at it. At all events, should we at last fail, we shall then recur to our offer of arbitration with a better effect.

The value of the suggestion which I have now made must very much depend upon the real feelings of the President and Mr. Buchanan. At present they occupy a position which perhaps they may be unwilling to abandon; for undoubtedly they will stand well towards the Congress and the country. But if Mr. M'Lane be correct in his description of their regret at the course which the matter has now taken, it is very possible that they may be willing to adopt a proceeding by which everything would be effectually rectified.

Under these circumstances I cannot give you any positive instructions, but must leave the matter to your own discretion. You must act according to your knowledge of the parties, and the real state of the case. Mr. M'Lane seemed to think that something of this kind might afford a solution of the difficulty; but I did not tell him that I should suggest this course to you, because I wished to leave you free, either to adopt it or not, as on full consideration you might think best. But I have no doubt that he will write in such terms to his Government as may predispose them to receive favourably a proposition of this nature.

. . . . . .

P.S.—Should my suggestion happily prove successful, you will of course cancel my despatch No. [64].

Pursuant to the discretionary powers thus granted, Pakenham acted; his report, with the copy of his withdrawn note of October 25, follows (Pakenham Papers, F.O. 5 : 429, despatch No. 115, October 29, 1845):

In consequence of what is stated in Your Lordships Dispatch N° 64 of 3d October, I though it my duty to make an effort, in as far as such an effort could be made without compromising the dignity of Her Majesty's Government to induce the American Secretary of State to retract His withdrawal of the proposal contained in His paper of 12: July last and thus to allow the Negotiation for a settlement of the Oregon Negotiation to go on to a natural conclusion.

What has passed on this occasion will, I think, satisfy Your Lordship that the present Government of the United States approached the Negotiation with no intention of settling the matter on fair terms,—by which I mean that their

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deliberate plan was either to dictate their own terms, or to come to no arrangement at all; and thus that all regret at what has happened will be removed from the mind of Her Majesty's Government.

In my first conversation with Mr Buchanan, immediately after the arrival of the last Packet, He expressed the most conciliatory intentions on the point immediately under consideration, saying that although His Government might not like to go so far as to retract the withdrawal of His original proposal, they would at all events authorize me to say that anything that Her Majesty's Government might think proper to propose with a view to an arrangement would receive the most respectful consideration—this He told me was His own opinion, but that He could say nothing conclusive on the subject—until He should have consulted the President—and He requested me to see Him again in a day or two.

At our next interview He repeated pretty nearly the same language, as He had at first made use of, and when I asked Him if He had any objection to say something in writing to the same effect—He replied that if I liked to make a written overture for the reopening of the Negotiation, He would submit my communication to the President, confidentially, and show me, also confidentially, the Draft of the answer which the President might think proper to return, it being distinctly and expressly understood between us that according to what I might think of the proposed answer I might withdraw my letter, or leaving it on record, accept the answer returned to it.

The following day, I again called on Mr Buchanan—He told me that the President had not yet made up His mind how to proceed, but that on the morrow, that was to day, He would be prepared to show me the Draft of the intended Answer, conformably to what had been agreed between us.

To day I accordingly went to Him, when to my surprise, He told me that the President had determined that I might either withdraw my letter, or abide by the Answer, whatever it might be, that Mr Buchanan was to return to me.

It was obvious to me from this that the terms of the intended answer would be such as only to make matters worse than they are at present, and I therefore without hesitation withdrew my letter,—Mr Buchanan distinctly pledging Himself that it should be considered strictly as "non avenu"—and that no record whatever of it had been preserved.

I beg leave to submit a copy of the letter in question, in which I trust Your Lordship will find nothing to object to.

It is true that it says plainly enough that Her Majesty's Government were not prepared to accept the terms proposed by Mr Buchanan, as a settlement of the question; Upon this point I imagine that Her Majesty's Government did not wish to affect any reserve or concealment, but I gave Him to understand that if His proposal was allowed to subsist, it might lead to further Negotiation, and thereby facilitate the accomplishment of the object which both Governments have so much at heart.

Thus then the matter stands at present, and if such a state of things can scarcely fail to cause embarrassment and anxiety to Her Majesty's Government, I think there is ample consolation in the reflection that a Negotiation which began by an avowal that the President "would not have consented to yield any portion "of the Oregon Territory, had He not felt embarrassed, if not committed by the "acts of His Predecessors", afforded no reasonable prospect of an arrangement such as Great Britain could agree to,—and therefore that the sooner the true state of the case was made evident, the better.

It now only remains for me to keep in reserve for any emergency that may arise, the offer which I am authorized again to make of referring the question at issue to arbitration of some independent and friendly State.

[Enclosure—British note of October 25, 1845, withdrawn]

I transmitted in due season to HMs Govt. the paper which I had the honor to receive from you on 16th July containing a proposal for the settlement of the Oregon Question.

I also transmitted a copy of the paper which I had the honor to present to you on the 30th of the same month in answer to your statement & proposal.

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Owing to circumstances which will doubtless have been made known to you by the Minister of the United States in London, these papers had not been many days in the hands of HM's Govt. so as scarcely to allow time for that attentive examination of them which the importance of the subject required, when they were followed by your communication dated 30th Augt, in which you withdraw the proposal contained in the previous communication on the ground that it had been rejected by me without even a reference to my own Govt. This step on the part of the Govt. of the United States is much regretted by HM's Govt. because although they were not prepared to accede to the terms set forth in your proposal as a settlement of the question under Consideration—that proposal might have led to further negotiation, thereby facilitating the accomplishment of what both Govts have so much at heart, namely the satisfactory adjustment of the only question likely in any way to cause difficulty or embarrassment in the relations between the two Countries.

HM's. Govt. will be glad to hear again from the Govt. of the United States on this subject.

And here it may not be out of place that I should request you for the sake of a more perfect understanding between us, to read again with attention that part of my statement in which I expressed to you my inability to accept your proposal—you will find Sir, that I did not say that I rejected the proposal; what I said was that I did not feel at liberty to accept it, & I think that in an examination of the question as it now stands the difference between the two expressions is of Essential importance.

Buchanan wrote unofficially to McLane on October 28, 1845, telling of the incident and enclosing copies of the note withdrawn and the undelivered answer (Moore, Works of James Buchanan, VI, 285–86; the enclosures are not there printed); and the account of Pakenham is further supplemented by the letter of Polk to McLane of October 29, headed "Private & unofficial", from which the following passages are excerpted (Library of Congress, Letter Book of James K. Polk, 1845–46, 57–65):

Mr Pakenham as I learn from *Mr Buchanan* has called several times at the Department of State,—and has manifested great uneasiness on the subject—as well as expressed an anxiety to renew the negotiation. *Mr Buchanan* has informed him—more than once that if the Brittish Government had any proposition to submit, it would be respectfully considered by this Government. With this he does not seem to have been satisfied, and on Monday—the 27th Instant,—delivered to *Mr Buchanan* a formal note dated on the 25th and in the close of their conversation—remarked that it might be regarded as official or not as—might be afterwards determined on. I gave to this note much consideration,—and an answer was prepared,—but not be delivered unless *Mr Pakenham* first elected to have his note regarded as official and placed on the files of the Department. *Mr Buchanan* informs me that the note has just been withdrawn by *Mr Pakenham*—who preferred to consider it as unofficial. Of course he has not seen the answer which had been prepared,—or been informed of its contents further than he might infer them,—from a remark of *Mr Buchanan*—which he informs me he made to him, to the effect,—that in the present state of the negotiation we could not be expected to abandon the position we had taken. It was this remark I incline to think which induced him to withdraw his note, and to consider it unofficial. *Mr Buchanan* will forward to you for your *private information* a copy of his note,—and of the answer which had been prepared,—but which was not delivered. From the answer you will be able to understand fully—the ground which this Government will continue to occupy.

The more I have reflected on the subject, the more doubt I have had, whether the administration could have been sustained by the constitutional majority of the Senate—or by the Country,—if our proposition—as made in Mr Buchanan's note of the 12th of July—had been accepted. It is at all events certain that Great Brittain will make no other proposition more favourable to the U. States

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than that which was so promptly rejected by *Mr Pakenham*, and in the existing state of things it is equally certain that we could not accept one less favourable if indeed we should *now* agree to the original proposition. *Mr Pakenham's* object seems to be, to receive something from the Government—here, which will relieve her Majesty's Government—from the embarrassment,—produced by the rejection of our proposition,—and its subsequent withdrawal by us In This he will not be gratified. There is nothing to prevent him from making any proposition—he may think proper to make, and when made, he has been informally informed that it would receive respectful consideration. He can have no assurance in advance what answer we would make to any proposition he may think proper to make. I am satisfied with our present position, which will be unchanged until the meeting of Congress unless—*Mr Pakenham*, shall address some other communication to this Government. If he does this, he must act voluntarily as he has a perfect right to do, and without waiting for an invitation from the U. States,—or receiving any assurances of what the answer would be. I can form no opinion whether the negotiation will be closed where it now stands or whether—the discussion will be continued. That will depend altogether on the Brittish Government. In either event, with my present views I shall probably consider it to be my duty to lay the whole subject before Congress in my annual message. I shall of course recommend nothing which would violate the Convention of the 6th of August [1827] but may give my views strongly as I entertain them of our rights in the Oregon territory.

The remark of Buchanan which induced the British Minister to withdraw his note was one which Polk regretted; and the American answer of October 28 (which was not delivered and the contents of which Buchanan was not permitted to discuss) was worded "precisely" as Polk had directed (Polk's Diary, I, 78–82, October 29, 1845). A copy of that answer is available (Library of Congress, 73 Polk Papers, 1845–46, 6978–79); after a review of the facts, it contains this response:

Thus the question now stands and he [the President] cannot consent to change his position & to recall what has been already done.

Mr Pakenham in his note of the 25th instant states that her Majestys Government will be glad to hear again from the Government of the United States on this subject.

In reply to this suggestion the undersigned can only refer Mr Pakenham to what has already been stated by him in his notes of the 12th July and 30th August last.

Under these circumstances the undersigned is instructed by the President to inform Mr Pakenham that he cannot renew the former offer, nor submit any new proposition, and that it will remain for the British Plenipotentiary to decide what other or further steps if any he may think proper to take in the negotiation.

The paper, cited above, from which the foregoing paragraphs are excerpted, is a copy of the note in the handwriting of Colonel J. Knox Walker, private secretary to President Polk. It bears the following certification signed by Walker under date of October 31, 1845:

A true copy of the original draft taken by me from the original in the handwriting of Mr Buchanan except that part beginning "In reply to &c down to "in the negotiation" which is in the handwriting of the Prest.

All efforts of Pakenham during this period to bring about a resumption of the negotiation were accordingly fruitless; they were reported by Buchanan to McLane in London (D.S., 15 Instructions, Great Britain, 266–68, November 5, 1845); Aberdeen discussed them with

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McLane, showing him two despatches from Pakenham, one of which contained "a statement of his [Pakenham's] subsequent attempts to induce you [Buchanan] to allow the President's proposition to stand as the basis of further negotiation, or to have some assurance of the answer which a new proposition from the British Government would receive. Mr. Packenham's statement of the facts on these points corresponds substantially with the account you have given me of the same circumstances" (D.S., 56 Despatches, Great Britain, No. 24, December 1, 1845).

The Message to Congress of December 2, 1845

The regular session of Congress (December 1, 1845) was approaching; both the diplomatic situation and the legal position of the Oregon country required that the Oregon question be submitted to Congress; the convention with Great Britain of August 6, 1827 (Document 56), was in force; for its abrogation, twelve months' notice by one party or the other was necessary; and neither Polk nor his advisers doubted that, for the giving of such notice by the United States, legislative authority was essential; moreover, the protection of the laws of the United States had not been extended to citizens resident in the Oregon country; and the number of American settlers there was increasing. The influence of the American settlements is discussed by Merk in "The Oregon Pioneers and the Boundary" (American Historical Review, XXIX, 681–99); that author points out, *inter alia*, that by 1845 there were no more than eight American families north of the Columbia; but the American settlers in the whole region numbered 6,000 or more (White, "Boundary Disputes and Treaties", in Canada and Its Provinces, VIII, 867–68). The story of the provisional government in the Oregon country is told by Bancroft (History of Oregon, I, chs. 12–22, *passim;* see also Carey, History of Oregon, chs. 28 and 29, 367–408).

The presidential message to Congress was discussed in Cabinet while it was being written, during the latter part of November; regarding the tone of the message, so far as it dealt with the Oregon question, Polk and Buchanan were naturally not in accord; the latter (seemingly to no avail) "proposed modifications . . . making the paper less firm and bold"; Buchanan appeared to be "greatly concerned lest the controversy about Oregon might lead to War" (Polk's Diary, I, 99–100, 101–2, November 20 and 25, 1845). Polk, as the event showed, was quite mistaken as to congressional sentiment on the Oregon question, particularly in the Senate; Buchanan was better informed (see *ibid.*, 107, November 29); Polk went so far as to hold the opinion that acceptance of the American proposal of July 12, 1845, "would have gone far to overthrow the administration" (*ibid.*; see also his expressions to the same effect in his letter to McLane of October 29, 1845, quoted above); subsequent debates and votes in the Senate made clear the error of that view.

That portion of the annual message to Congress of December 2, 1845, which was devoted to the Oregon question reviewed the negotiations

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from 1818 up to the close of the Tyler administration (March 4, 1845) and thus continued (Richardson, IV, 392–98):

When I came into office I found this to be the state of the negotiation. Though entertaining the settled conviction that the British pretensions of title could not be maintained to any portion of the Oregon Territory upon any principle of public law recognized by nations, yet in deference to what had been done by my predecessors, and especially in consideration that propositions of compromise had been thrice made by two preceding Administrations to adjust the question on the parallel of 49°, and in two of them yielding to Great Britain the free navigation of the Columbia, and that the pending negotiation had been commenced on the basis of compromise, I deemed it to be my duty not abruptly to break it off. In consideration, too, that under the conventions of 1818 and 1827 the citizens and subjects of the two powers held a joint occupancy of the country, I was induced to make another effort to settle this long-pending controversy in the spirit of moderation which had given birth to the renewed discussion. A proposition was accordingly made, which was rejected by the British plenipotentiary, who, without submitting any other proposition, suffered the negotiation on his part to drop, expressing his trust that the United States would offer what he saw fit to call "some further proposal for the settlement of the Oregon question more consistent with fairness and equity and with the reasonable expectations of the British Government." The proposition thus offered [on July 12, 1845] and rejected [on July 29] repeated the offer of the parallel of 49° of north latitude, which had been made by two preceding Administrations, but without proposing the surrender to Great Britain, as they had done, the free navigation of the Columbia River. The right of any foreign power to the free navigation of any of our rivers through the heart of our country was one which I was unwilling to concede. It also embraced a provision to make free to Great Britain any port or ports on the cap of Quadra and Vancouvers Island [1] south of this parallel. Had this been a new question, coming under discussion for the first time, this proposition would not have been made. The extraordinary and wholly inadmissible demands of the British Government and the rejection of the proposition made in deference alone to what had been done by my predecessors and the implied obligation which their acts seemed to impose afford satisfactory evidence that no compromise which the United States ought to accept can be effected. With this conviction the proposition of compromise which had been made and rejected was by my direction subsequently withdrawn [on August 30] and our title to the whole Oregon Territory asserted, and, it is believed, maintained by irrefragable facts and arguments.

The civilized world will see in these proceedings a spirit of liberal concession on the part of the United States, and this Government will be relieved from all responsibility which may follow the failure to settle the controversy.

All attempts at compromise having failed, it becomes the duty of Congress to consider what measures it may be proper to adopt for the security and protection of our citizens now inhabiting or who may hereafter inhabit Oregon, and for the maintenance of our just title to that Territory. In adopting measures for this purpose care should be taken that nothing be done to violate the stipulations of the convention of 1827 [Document 56], which is still in force. The faith of treaties, in their letter and spirit, has ever been, and, I trust, will ever be, scrupulously observed by the United States. Under that convention a year's notice is required to be given by either party to the other before the joint occupancy shall terminate and before either can rightfully assert or exercise exclusive jurisdiction over any portion of the territory. This notice it would, in my judgment, be proper to give, and I recommend that provision be made by law for giving it accordingly, and terminating in this manner the convention of the 6th of August, 1827.

[1] Now Vancouver Island; named "Quadra and Vancouver" by Captain George Vancouver, who in 1792 first discovered that it was separated from the mainland; the name "Quadra" has of late been bestowed on a small island east of Vancouver Island and separated therefrom by Discovery Passage, in latitude 50° (see Wagner, Spanish Explorations in the Strait of Juan de Fuca, 54–55).

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It will become proper for Congress to determine what legislation they can in the meantime adopt without violating this convention. Beyond all question the protection of our laws and our jurisdiction, civil and criminal, ought to be immediately extended over our citizens in Oregon. They have had just cause to complain of our neglect in this particular, and have in consequence been compelled for their own security and protection to establish a provisional government for themselves. Strong in their allegiance and ardent in their attachment to the United States, they have been thus cast upon their own resources. They are anxious that our laws should be extended over them, and I recommend that this be done by Congress with as little delay as possible in the full extent to which the British Parliament have proceeded in regard to British subjects in that Territory by their act of July 2, 1821 [1 and 2 George IV, ch. 66], "for regulating the fur trade and establishing a criminal and civil jurisdiction within certain parts of North America." By this act Great Britain extended her laws and jurisdiction, civil and criminal, over her subjects engaged in the fur trade in that Territory. By it the courts of the Province of Upper Canada were empowered to take cognizance of causes civil and criminal. Justices of the peace and other judicial officers were authorized to be appointed in Oregon with power to execute all process issuing from the courts of that Province, and to "sit and hold courts of record for the trial of criminal offenses and misdemeanors" not made the subject of capital punishment, and also of civil cases where the cause of action shall not "exceed in value the amount or sum of £200."

Subsequent to the date of this act of Parliament a grant [of May 30, 1838, cited above] was made from the "British Crown" to the Hudsons Bay Company of the exclusive trade with the Indian tribes in the Oregon Territory, subject to a reservation that it shall not operate to the exclusion "of the subjects of any foreign states who, under or by force of any convention for the time being between us and such foreign states, respectively, may be entitled to and shall be engaged in the said trade." It is much to be regretted that while under this act British subjects have enjoyed the protection of British laws and British judicial tribunals throughout the whole of Oregon, American citizens in the same Territory have enjoyed no such protection from their Government. At the same time, the result illustrates the character of our people and their institutions. In spite of this neglect they have multiplied, and their number is rapidly increasing in that Territory. They have made no appeal to arms, but have peacefully fortified themselves in their new homes by the adoption of republican institutions for themselves, furnishing another example of the truth that self-government is inherent in the American breast and must prevail. It is due to them that they should be embraced and protected by our laws. It is deemed important that our laws regulating trade and intercourse with the Indian tribes east of the Rocky Mountains should be extended to such tribes as dwell beyond them. The increasing emigration to Oregon and the care and protection which is due from the Government to its citizens in that distant region make it our duty, as it is our interest, to cultivate amicable relations with the Indian tribes of that Territory. For this purpose I recommend that provision be made for establishing an Indian agency and such subagencies as may be deemed necessary beyond the Rocky Mountains.

For the protection of emigrants whilst on their way to Oregon against the attacks of the Indian tribes occupying the country through which they pass, I recommend that a suitable number of stockades and block-house forts be erected along the usual route between our frontier settlements on the Missouri and the Rocky Mountains, and that an adequate force of mounted riflemen be raised to guard and protect them on their journey. The immediate adoption of these recommendations by Congress will not violate the provisions of the existing treaty. It will be doing nothing more for American citizens than British laws have long since done for British subjects in the same territory.

It requires several months to perform the voyage by sea from the Atlantic States to Oregon, and although we have a large number of whale ships in the Pacific, but few of them afford an opportunity of interchanging intelligence without great delay between our settlements in that distant region and the United States. An overland mail is believed to be entirely practicable, and the importance of establishing such a mail at least once a month is submitted to the favorable consideration of Congress.

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It is submitted to the wisdom of Congress to determine whether at their present session, and until after the expiration of the year's notice, any other measures may be adopted consistently with the convention of 1827 for the security of our rights and the government and protection of our citizens in Oregon. That it will ultimately be wise and proper to make liberal grants of land to the patriotic pioneers who amidst privations and dangers lead the way through savage tribes inhabiting the vast wilderness intervening between our frontier settlements and Oregon, and who cultivate and are ever ready to defend the soil, I am fully satisfied. To doubt whether they will obtain such grants as soon as the convention between the United States and Great Britain shall have ceased to exist would be to doubt the justice of Congress; but, pending the year's notice, it is worthy of consideration whether a stipulation to this effect may be made consistently with the spirit of that convention.

The recommendations which I have made as to the best manner of securing our rights in Oregon are submitted to Congress with great deference. Should they in their wisdom devise any other mode better calculated to accomplish the same object, it shall meet with my hearty concurrence.

At the end of the year's notice, should Congress think it proper to make provision for giving that notice, we shall have reached a period when the national rights in Oregon must either be abandoned or firmly maintained. That they can not be abandoned without a sacrifice of both national honor and interest is too clear to admit of doubt.

Oregon is a part of the North American continent, to which, it is confidently affirmed, the title of the United States is the best now in existence. For the grounds on which that title rests I refer you to the correspondence of the late and present Secretary of State with the British plenipotentiary during the negotiation. The British proposition of compromise, which would make the Columbia the line south of 49°, with a trifling addition of detached territory to the United States north of that river, and would leave on the British side two-thirds of the whole Oregon Territory, including the free navigation of the Columbia and all the valuable harbors on the Pacific, can never for a moment be entertained by the United States without an abandonment of their just and clear territorial rights, their own self-respect, and the national honor. For the information of Congress, I communicate herewith the correspondence which took place between the two Governments during the late negotiation.

The voluminous papers which accompanied the message (which dealt at length with other questions, including relations with Mexico) are printed with it in Senate Document No. 1, 29th Congress, 1st session, serial 470; the Oregon papers are at pages 138–92 thereof; they comprise two notes of November 1842 and the exchanges at Washington from February 24, 1844, to August 30, 1845; no instructions to McLane at London or despatches from him are included; the American note of August 30, 1845 (withdrawing the offer of the previous July 12), is the latest in date of the papers printed and was at the time the latest written communication which had passed between the two Governments on the Oregon question; but during the three months which had elapsed since the date of that note, the British Government had made known, both to McLane at London and to Buchanan at Washington, its desire to renew the negotiation on the basis of the American offer of July 12, 1845; there was not a hint of this fact, however, either in the papers which accompanied the message or in the message itself; indeed, the message spoke of the British "demands" and the rejection of the American offer as affording "satisfactory evidence that no compromise which the United States ought to accept can be effected", and of "all attempts at compromise" as "having failed".

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The British Attitude

Lord Aberdeen wrote thus to Sir Robert Peel on October 17, 1845 (Selections from the Correspondence of George, Earl of Aberdeen, 1845, 385–87):

> I am perfectly convinced that the question might be easily and satisfactorily settled with Mr. M'Lane in the course of half an hour. But then this has reference only to the merits of the question itself, and not to the circumstances by which it has been attended, and which have created the whole difficulty of the settlement. The interests involved are of no great moment, and it is this which renders the subject so well fitted for arbitration; but I fear that we must consider it improbable that it should ever be settled in any other manner.
>
> If it should ever be possible to effect a settlement between ourselves upon terms, I think the following might perhaps be accepted, and I should be very unwilling to concede more. I would carry the 49th parallel of latitude, as the boundary, *to the sea*, and give to the United States the line of coast to the south of this degree. This would leave us in possession of the whole of Vancouver's Island and the northern shore of the entrance into the Straits of St. John de Fuca.
>
> The navigation of the Columbia, to its most remote accessible point, should be common to both parties at all times; and all the ports between the Columbia and the 49th parallel, whether on the mainland or in the island, should be declared free ports.
>
> I believe that this would give us everything really worth contending for, and it would seem to coincide with the notions of the Hudson's Bay Company, who have lately established their principal settlement on Vancouver's Island.

The bases thus suggested are very similar, it will be seen, to those put forward in the letter of Aberdeen to Peel of September 25, 1844 (cited and quoted in part above).

Another letter of Aberdeen to Pakenham, of December 3, 1845, includes this paragraph (*ibid.*, 507–9):

> Notwithstanding the unpromising appearance of the present state of the negotiation, I feel satisfied that we are now nearer a settlement than ever. If we press arbitration, they must either accept it, or give us facilities for reopening the direct negotiation. If they do neither, they will be so manifestly in the wrong that I greatly doubt their receiving the necessary support, even from the most hostile portion of the American public. I expect a strong declaration from the President in his annual message, and even a recommendation to terminate the Treaty. I shall not at all regret this; for as the crisis becomes more imminent, the chance of settlement improves. I imagine the President and his Government are more afraid of the Senate than they are of us, and that much management is required to accomplish what they really desire. Mr. Polk may well doubt his power of obtaining the sanction of two-thirds of the Senate to any Convention which he could conclude with us. But many things may shortly occur to improve the prospect of affairs very considerably. The access of Indian corn to our markets would go far to pacify the warriors of the Western States.

The final sentence of the paragraph just quoted refers to the repeal of the Corn Laws. On this subject, see Merk, "The British Corn Crisis of 1845–46 and the Oregon Treaty", in Agricultural History, VIII, 95–123; and Martin, "Cotton and Wheat in Anglo-American Trade and Politics, 1846–1852", in Journal of Southern History, I, 293–319. Various "non-American" (including economic) factors in their relation to the Oregon negotiation are discussed in Sioussat, "James Buchanan", in American Secretaries of State and Their Diplomacy, V, 258–61, 399–400.

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The attitude of the British Government at the time of the presidential message to Congress is thus described by McLane in his account (December 1, 1845) of a conversation "recently" had with Aberdeen (D.S., 56 Despatches, Great Britain, No. 24):

> The principal object of Lord Aberdeen, in seeking the interview, appeared to me to be, to point out the embarrassment in which he thought the President's withdrawal of his proposition had placed this Government. It was quite evident, indeed he expressly said, that he was not prepared to accept the President's proposition, but desired only to make it the basis of further negotiation, and modified propositions from his Government, which he would have done notwithstanding the rejection of it by Mr Packenham, if it had not been withdrawn by the direction of the President. He complained of the withdrawal of the proposition as unusual if not unprecedented in Diplomacy, and seemed to consider it impossible in the present posture of the affair, to submit any proposition for a partition of the territory in dispute, unless he could have some assurance of the treatment which any proposition he might submit for that purpose would receive.
>
> Under these circumstances, he could only regard the negotiation as having been terminated by the President; and the door to further attempts at compromise being thus closed, this Government had no alternative, in its desire to preserve the peaceful relations of the two countries, than to propose arbitration, and abide the consequences. Indeed I understood him to say very distinctly that this course would be pursued. It may be considered certain therefore that if he have not been already, Mr Packenham will by the present steamer be instructed to propose an arbitration: and that according to the answer that proposition may receive, the ultimate course upon the part of this Government will be defined.
>
> I think it not improbable that if the offer be declined upon the ground upon which it is understood it was refused by Mr Calhoun, towit, that a more satisfactory adjustment might be obtained through the medium of negotiation, this Government would then submit a new proposition, and so resume the negotiation; but that if it be refused on such terms as to warrant them in assuming that our Government has determined to insist upon the extreme claim, and to decline both negotiation and arbitration, this Government will treat the offer to arbitrate as its ultimatum, and abide the result. Of course these opinions are founded upon the observations of the Earl of Aberdeen in the conversation to which I have already alluded.
>
> Although I am quite sure that the Earl of Aberdeen has no idea at present of accepting the compromise contained in the President's proposition, it would not surprise me if an arrangement upon that basis should prove acceptable to large and important classes in this country, indeed complained of principally by the Hudson's Bay Company, and those in its interest. That the Ministry would find it difficult, and hazardous to prefer war to such a settlement may well be imagined, although you may assume it to be certain that when war becomes inevitable it will receive the undivided support of the British people.
>
> I believe the Government and People here are quite prepared for the reassertion in the message of the President's opinions expressed in his inaugural address, and, perhaps, for a recommendation by him to terminate the joint occupation in the manner provided by the existing Treaty. And I also think that unless the recommendation in the message should be such as to discourage further negotiation, and to manifest a determination to insist upon our whole right, they would not lead to any immediate measures upon the part of this Government, or materially add to the embarrassment in which the relations between the two countries appear to be at present involved.

Thus while the British Government did not expect that an offer of arbitration of the Oregon question would be accepted, it was thought that perhaps the wording of the refusal of such an offer might open the door to a resumption of negotiations for compromise.

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The Offer of Arbitration

The offer of arbitration was duly made. The exchanges are printed in Senate Document No. 117, 29th Congress, 1st session, serial 473; also in House Document No. 105 of that session, serial 483; the notes of Pakenham are in D.S., 23 Notes from the British Legation, and those of Buchanan, in D.S., 7 Notes to the British Legation, 128–34.

Light is thrown upon the attitude of both Governments at this time by the full memorandum (in the handwriting of Buchanan) of the conversation which was had by the two Plenipotentiaries upon the presentation of the British offer of arbitration. Particularly is to be noted the renewed request that the negotiations might be resumed on the basis of the American offer of the previous July 12 (the text of the memorandum here is from Moore, Works of James Buchanan, VI, 350–53):

On Saturday afternoon, 27th of December, 1845, Mr. Pakenham called at the Department of State. After some brief preliminary conversation on other topics, he informed me that he had received instructions from his government relative to the Oregon question; without at the time informing me what they were. He then proceeded to express his desire that I should recall the withdrawal of our offer to settle the Oregon question by the 49th parallel of latitude, and suffer the negotiation to proceed on that basis, expressing the belief that it might then result in a satisfactory manner. I informed him that he had made one proposition to Mr. Calhoun, which had been rejected; that I had made a proposition which had been rejected by him and then withdrawn; that the whole negotiation had been submitted to Congress with the President's message; and after all this, it was too late to expect that the President would now retrace his steps. That what had been done must be considered as done.

He then said that if he were now to make a new proposition, he had no means of knowing whether it would be accepted: if he made a proposition it might be rejected.

I replied that the whole field was open to him, as it had been in the beginning; that it was as free to him as it had been to him at first, or was to me afterwards, to make any proposition he thought proper; that all I could say was that any proposition he might make would be respectfully considered by the President; but I said no more.

He then observed that as I was not willing to go further (as I understood him), he would, under his instructions, present me the offer of the British government to arbitrate the question. He said it was drawn up chiefly in the very language of Lord Aberdeen.

I then received the communication from him and read it over carefully. As soon as I had completed its perusal, he urged its acceptance strongly; expressed his great desire for the preservation of peace between the two countries, and said that it was impossible that war should grow out of such a question between two great nations. He said he was not worth much in the world; but would give half what he was worth to see the question honorably and amicably adjusted between the two nations.

I stated the strong desire, both on the part of the President and myself, that the question might be amicably and honorably adjusted. That we had every disposition that this result might be attained. I observed, however, that if ever this was accomplished, I thought it must be by negotiation, and not by arbitration; and especially such an arbitration as he proposed. That both the President and myself were firmly convinced of the validity of our title up to 54°40′; and yet his proposition to arbitrate assumed the right to a portion of the territory on the part of Great Britain, and left it to the arbitrator alone to decide in what manner the territory should be divided between the parties. That this

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alone, I thought, would be a sufficient reason for the rejection of his proposition, even if others did not exist, of which he must be aware from our previous conversations on the subject; but I would consult the President, and give him an answer with as little delay as possible. He intimated rather than expressed a wish that his answer might be communicated to him in time for the packet (Monday). I told him that a proper respect for the British government required that the answer should be well considered; that the cabinet would not meet again before Tuesday, and I could not encourage him to expect the answer before Saturday next. He said he had no doubt my answer would be well considered. He hoped that in it I would not assert a claim to the whole territory, and Saturday next would be in time.

He then branched off, and said that the proposition was to refer the question to a state as well as a sovereign; he said that this had been done on purpose to get clear of the objection to crowned heads. I asked him to whom he thought it might be referred if not to a sovereign. He suggested the Republic of Switzerland, or the government of Hamburg or Bremen. I told him that whilst my own inclinations were strongly against arbitration; if I were compelled to select an arbitrator, it would be the Pope. That both nations were heretics, and the Pope would be impartial. This he appeared at first to take seriously,—he said the Pope was a temporal sovereign; but I thought he was disinclined to select him as an arbitrator. He perceived, however, that I was not in earnest, and suggested that the reference might be made to commissioners from both countries. I told him I thought it was vain to think of arbitration; because, even if the President were agreed to it, which I felt pretty certain he was not, no such treaty could pass the Senate. That the pursuit of arbitration would only involve the question in new difficulties. He then suggested the mediation of a third power in the adjustment of the question. I told him that was an idea which he had never suggested before, and on which I could say nothing. He observed that this, together with his suggestion of commissioners, came from himself and had not been embraced in his instructions. He said that a mediator who would interfere might share the fate of the man who interfered between two other men who were fighting, when both fell upon him and gave him a sound drubbing.

He remarked that the affair might remain just where it was, and the British government would not disturb it. He did not entertain serious apprehensions of war.

He then told me that he had met Judge [Stephen Arnold] Douglas at Mr. Cox's party the other evening, and had a good deal of conversation with him about his bill ["to protect the rights of American settlers in the Territory of Oregon, until the termination of the joint occupancy of the same" (see Congressional Globe, XV, 85, December 19, 1845)].

He objected to a promise of a grant of lands to actual settlers in Oregon, and to the erection of forts by the Government within it, as violations of the treaty. I told him I had formed no decided opinion as to the promise of grants of land; but as to the forts, it was very clear, in my opinion, that we had a right to erect them. We did not purpose to erect fortifications capable of enduring a siege in civilized warfare; but merely stockade forts to protect our emigrants from the savages. That the Hudson's Bay Company had erected many such forts, and we surely had the right under the treaty to do what they had done. He observed that the settlers might do this themselves as the Company had done. I replied that they were too poor; that this Company had the entire government in its hands; and surely we might do what they had done. I observed that this was ever the way with Great Britain, she was always fettered by monopolies; and if it were not for the Company they would at once give us our rights to the whole country up to 54°40′. He said that the Hudson's Bay Company had rights in Oregon which must be protected; but I understood him to admit that they did interpose an obstacle in the way of the settlement of the question. He said the British government would be glad to get clear of the question on almost any terms; that they did not care if the arbitrator should award the whole territory to us. They would yield it without a murmur. I said I had no doubt of this. They never played the part of the fox; but always of the lion. They would preserve their faith inviolate. He said they wished for peace; but intimated that this was not

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our wish. I asked him why we should desire war. Would not their superiority at sea give them command of the coasts of Oregon. Yes, he said, that was true, but the war would not be confined to that region. That he would willingly make a bargain to fight it out with us there, if we would agree to that.

The note of Pakenham of December 27, 1845, offering arbitration, which was presented to Buchanan during the conversation recorded in the foregoing memorandum, was not only couched in very friendly terms, but used language which hinted at the hope of a reopened door to negotiation; but the answer of Buchanan, under date of January 3, 1846, referred to the assertion in Buchanan's note of the preceding August 30 (cited and quoted in part above) of the title of the United States to the whole of the Oregon country and rejected the proposal of arbitration without opening the way to further negotiation. The texts of the two notes follow:

[*Mr. Pakenham to Mr. Buchanan*]

WASHINGTON *27 December 1845.*

An attentive consideration of the present State of Affairs with reference to the Oregon Question has determined the British Government to instruct the Undersigned, Her Britannick Majesty's Envoy Extraordinary and Minister Plenipotentiary again to represent in pressing terms to the Government of the United States, the expediency of referring the whole Question of an equitable division of that Territory, to the arbitration of some Friendly Sovereign or State.

Her Majesty's Government deeply regret the failure of all their efforts to effect a friendly settlement of the Conflicting claims by direct Negotiation between the two Governments.

They are still persuaded that great advantages would have resulted to both Parties from such a mode of settlement, had it been practicable, but there are difficulties now in the way in that course of proceeding which it might be tedious to remove, while the importance of an early settlement seems to become at each moment more urgent.

Under these circumstances Her Majesty's Government think that a resort to arbitration is the most prudent and perhaps the only feesible step which could be taken, and the best calculated to allay the existing effervescence of popular feeling, which might otherwise greatly embarrass the efforts of both Governments to preserve a friendly understanding between the two Countries.

The Government of the United States will see in the proposal which the Undersigned is thus instructed to make, a proof of the confidence of the British Government in the Justice of their own claim. They will also see in it a proof of the readiness of the British Government to incur the risk of a great sacrifice for the preservation of peace and of their friendly Relations with the United States. It is made in a spirit of moderation and firmness of which the world will Judge.

The British Government Confidently hope that the Government of the United States will not reject a proposal made with such a friendly intention, and for a purpose so holy.

There is nothing in it they are convinced not perfectly compatible with the strictest regard for the honor and just interests of both Parties, particularly when it is considered of what small value to either is the portion of Territory which, in reality, forms the subject of Controversy, compared with the importance of preserving a state of peace and goodwill between two such nations.

The Undersigned takes advantage of this opportunity to renew to the Hon. James Buchanan the assurance of His high consideration.

R PAKENHAM

The Honble JAMES BUCHANAN
&c &c &c

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[*Mr. Buchanan to Mr. Pakenham*]

DEPARTMENT OF STATE,
Washington, 3d Jan^{y}, 1846.

Right Honble RICHARD PAKENHAM,
&c., &c., &c.

The Undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Pakenham, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, dated the 27th ultimo, by which, under instructions from his Government, he proposes to the Government of the United States "the expediency of referring the whole question of an equitable division of that (the Oregon) territory to the arbitration of some friendly Sovereign or State."

The Undersigned has submitted this note to the President, who, after having bestowed upon it that respectful consideration so eminently due to any proposition emanating from the British Government, has instructed him to give to it the following answer:

The British Government do not propose to refer to arbitration the question of the title to the Oregon territory, claimed by the two Powers, respectively. It is a proposition to refer to a friendly Sovereign or State, merely the partition or "equitable division" of that territory between the parties. It assumes the fact that the title of Great Britain to a portion of the territory is valid, and thus takes for granted the very question in dispute. Under this proposition, the very terms of the submission would contain an express acknowledgment of the right of Great Britain to a portion of the territory, and would necessarily preclude the United States from claiming the whole before the arbitrator. This, too, in the face of the note of the Undersigned to Mr. Pakenham of the 30th August last, by which the President had asserted, in the most solemn form, the title of the United States to the whole territory. Even if there were not other conclusive reasons for declining the proposition, this alone would be deemed sufficient by the President.

The President heartily concurs with the British Government in their regret that all attempts to settle the Oregon question by negotiation have hitherto failed. He cannot, however, concur with that Government in the opinion that a resort to arbitration, and especially to an arbitration on the terms proposed, would be followed by happier consequences. On the contrary, he believes that any attempt to refer this question to a third Power, would only involve it in new difficulties.

In declining this proposition, the President refers to the sentiment expressed in the note of the Undersigned of the 30th August last, to which allusion has already been made, that he "cherishes the hope that this long-pending controversy may yet be finally adjusted in such a manner as not to disturb the peace, or interrupt the harmony now so happily subsisting between the two nations."

The Undersigned avails himself of this occasion to renew to Mr Pakenham assurances of his distinguished consideration.

JAMES BUCHANAN.

After writing on January 6 that he would send the note of January 3 to his Government, Pakenham put forward on January 16 his suggestion of a reference to "some friendly Sovereign or State" (or perhaps to a mixed commission or a board of civilians and jurists) of "the question of Title in either of the two Powers to the whole Territory; subject of course to the condition that if neither should be found in the opinion of the Arbitrator, to possess a complete Title to the whole Territory, there should, in that case, be assigned to each that portion of Territory which would in the opinion of the arbitrating Power, be called for by a just appreciation of the respective claims of each"; but this proposal was also rejected by a note of February 4; and Polk required the omission from that note of certain

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rather conciliatory paragraphs of Buchanan's draft (Polk's Diary, I, 208–9, February 4, 1846).

In the meantime McLane had been informed by an instruction of December 13, 1845 (D.S., 15 Instructions, Great Britain, 283–85; Senate Document No. 489, 29th Congress, 1st session, serial 478, p. 36), of the decision of Polk to submit to the Senate any new proposal of settlement which he thought of a character "such as to justify" it; that portion of the instruction was worded by Polk, contrary to the views of Buchanan, whose draft was specific both as to boundary and as to the Columbia River (Polk's Diary, I, 122–23, December 13, 1845), and who also wished to communicate to the British Government the decision mentioned (see *ibid.*, 119–20).

In the same instruction McLane was directed to discuss with Aberdeen the reported "warlike preparations" of Great Britain; and that portion of the instruction, with an extract from the despatch of McLane of January 3, 1846, containing only so much of his report of his conversation with Aberdeen of the previous December 30 as dealt with that subject, is printed in Senate Document No. 117, 29th Congress, 1st session, serial 473, pp. 2–4, and in House Document No. 105, same session, serial 483, pp. 2–4. From the despatch of McLane mentioned, the following, which is not printed in the Senate and House documents cited, is excerpted (D.S., 56 Despatches, Great Britain, No. 30):

> Lord Aberdeen took the occasion at this interview to advert to the Message of the President and to the present posture of our relations. He repeated the sincere disposition of this Government, which I do not doubt is entertained, to maintain peace by means of an equitable compromise of the claims of the two Governments; and, although after the date of your two last despatches, I was in no situation to say what might have been calculated to draw from him with greater explicitness what he thought the compromise ought to be, I still think that some arrangement by which the rights of the Hudson's Bay Company might be continued for a series of years, as stated in my private letter to the President of the 4th of August last [cited and quoted in part above], would probably give sufficient novelty to the negotiation to enable this Government more readily to avoid what they deem the point of honor, and abate something of their former demands. This however, depends too much upon conjecture, to authorize me to hazard the opinion with greater certainty.
>
> Lord Aberdeen also stated that Mr Packenham had been specially instructed in the present state of the affair, to submit an offer of arbitration; and said that whether this Government would make any further effort at negotiation, in case this offer should be refused, would depend upon the manner and terms in which it should be declined; and he reaffirmed generally, the views upon this head, which I communicated in my Despatch Number 24, dated the 1st of December. He added that if the offer of arbitration should be rejected in terms calculated to forbid a renewal of the negotiation (and I here felt it my duty uniformly to discourage any expectation that an offer of arbitration could be accepted) it would be difficult to prevent a very general impression with the Government and People of this country that the United States were determined to produce hostilities.
>
> He did not appear to think that the Message had increased the difficulties of the case; indeed I had ventured to prepare him for quite as strong a paper; and he admitted that the recommendations of the President were not inconsistent with a continuance of pacific relations. He is also prepared, I am quite sure, for the carrying out by Congress of the recommendations of the Message, and will not consider that as adding to the present embarrassments. He seemed

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rather disposed to regard such measures, not only as consistent with our rights under the Treaty, but as reducing the subject to a more definite form, and expressed a confident hope that during the year which would be allowed for the termination of the joint occupancy, some means would be found, if both nations were sincerely desirous of peace, of avoiding ultimate difficulty.

Terms Discussed at Both Capitals

Discussion of the terms of a possible British proposal, which, if made, would be deemed proper to submit to the Senate, continued between Polk and Buchanan (Polk's Diary, I, 135, December 23, 1845), and, even more important, perhaps, was had with Senators, including William Allen,[1] of Ohio, Chairman of the Senate Committee on Foreign Relations (*ibid.*, 139–41, December 24); the policy, as agreed on in Cabinet, was to refer to the Senate an offer of "the 49° or a proposition equivalent to it" (*ibid.*, 147, December 27); John C. Calhoun, Senator from South Carolina, former Secretary of State, and a leading figure in the Democratic Party, favored compromise [2] and supported the British title to the valley of the Fraser River (*ibid.*, 161–62, January 10, 1846); possibilities of a crisis in relations with Mexico led to orders to the Navy (*ibid.*, 171, January 17); and the news of the fall of the ministry of Sir Robert Peel,[3] received on January 19 (*ibid.*, 180–81), not unnaturally gave rise to doubts whether a favorable opportunity for conventional settlement of the Oregon question had not passed.

Polk appears to have believed at this time that no agreement to divide the Oregon country was likely; he imagined a new and different basis of settlement, which was put forward in Cabinet on January 24, 1846, and elaborated in a letter to McLane four days later, who was authorized in his discretion to "sound" Lord Aberdeen as to its practicability (Library of Congress, Letter Book of James K. Polk, 1845–46, 286–99); McLane wrote "unofficially" to Buchanan on March 17, 1846 (Historical Society of Pennsylvania, Buchanan Papers), that "it would be altogether inexpedient to advert to any idea of connecting our commercial regulations with the Oregon question"; the record of the statement of Polk to the Cabinet is as follows (Polk's Diary, I, 191–92):

> I brought the present state of the Oregon question again before the Cabinet. I suggested for consideration, the possibility of some new basis of adjustment. I stated that there was no probability that any division of the territory could be agreed upon, or would be acceded to by the people of the U.S., & that we had rejected the offer of arbitration which had been recently made by the British Minister. I then suggested as a possible basis of adjustment a Treaty of commerce by which each country should stipulate to relax their restrictive systems;

[1] Allen was opposed to any compromise and resigned from the Committee on Foreign Relations on June 15, 1846, in protest; see Polk's Diary, I, 471–72, and Congressional Globe, XV, 972.

[2] For the views of Calhoun, see his speech of March 16, 1846, in Congressional Globe, XV, 502–6, and more fully in Works of John C. Calhoun, IV, 258–90.

[3] Sir Robert Peel resigned on December 9, 1845; but as Lord John Russell did not then succeed in forming a government, Peel and his Cabinet resumed office and remained in power for some six months longer.

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by which Brittish duties on American Breadstuffs, rice, cotton, tobacco, & other articles exported to Great Brittain should be reduced to a moderate revenue standard; and that like reductions should be made by the U.S. on Brittish manufactures imported into the U.S. I stated the reduction of our tariff would be a great object with Great Brittain, and that to attain it that Government might be willing to surrender her claim to the whole Oregon territory, on receiving a round sum to enable her to indemnify her Hudson's Bay Company for the valuable improvements which they had made in Oregon. I stated that I did not know this was feasible, but it would relieve Great Brittain of the point of Honor in the controversy, and that possibly she might acceed to it, because she esteemed her commerce with the U.S. as of infinitely more value than she did the Oregon territory. Of course if such an adjustment could be made, it must first receive ratification of the Senate, and then the approval of Congress, who must pass a law revising our tariff of duties accordingly, and making the necessary appropriations to carry it into effect. I stated that I had [not] matured or fully considered the subject, but merely suggested it for deliberation between this time and the next meeting of the Cabinet.

The views of Buchanan now, in some degree, prevailed; the instruction to McLane of January 29, 1846 (D.S., 15 Instructions, Great Britain, 296–99; Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 37–39), intimated a desire for a fresh proposal from the British Government, stated that the President would submit such a proposal to the Senate if he decided it to "be of a character to justify" that course, and authorized McLane, at his discretion, to inform Aberdeen in the sense of the instruction; all this did not amount either to a renewal of the negotiations or to a transfer of them, if renewed, to London; but it was ample authority for conversations tending to arrange for and even to formulate subsequent negotiations; the only statement in Polk's Diary (I, 197, January 27, 1846) regarding that important instruction is this: "Our relations with Mexico & Great Brittain were subjects of conversation. Mr. Buchanan read a despatch which he had prepared to Mr. Slidell in Mexico. The character of a despatch to Mr. McLane at London was agreed on."

After a review of the reasons for the rejection of any proposal for arbitration of the Oregon question, that instruction concluded with these paragraphs:

Upon the whole, the pursuit of arbitration by the British Government can produce no other effect than to involve the question in new difficulties, and, perhaps, by the delay, render an amicable adjustment of it impossible. The fact is not to be disguised that the feeling of the country is becoming daily more unanimous and intense in favor of asserting our right to the whole territory; and the debates in Congress and their delay to act in accordance with the recommendations of the President, only serve to increase the popular excitement. Resolutions of State Conventions and State Legislatures are now in succession being adopted in favor of adhering to the line of 54°40′. If the British Government intend to make a proposition to this Government, they have not an hour to lose, if they desire a peaceful termination of the controversy.

Notwithstanding all you may have seen in the public papers, the notice [joint resolution authorizing abrogation of the convention of 1827], unless I am greatly mistaken, will pass Congress, in some form or other, by large majorities of both Houses, as well as the other measures recommended by the President.

There is one fact which, in your discretion, might cautiously and informally be made known to the British Government. The President will never abandon the position he has taken in his message. Clearly convinced of the right of the

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United States to the whole territory in dispute, and relieved by the refusal of the British Government to accept his offer of compromise, from the embarrassment in which the acts of his predecessors had placed him, he would not now authorize the conclusion of a treaty on that basis. But the Senate, his constitutional advisers, are now in session. The question of peace or war may be involved in the issue. They are a branch of the war-making, as well as of the treaty-making power. In deference to the Senate, under these circumstances, he would, in the first instance, feel it to be his duty to submit such a proposition for their previous advice. It is manifest, therefore, that the British Government should at once present their ultimatum. If Mr. Pakenham should offer less, in the hope that, having thus recommenced the negotiation, he might, in its progress, induce me to say what the President would consent to accept, he must be disappointed. The President will accept nothing less than the whole territory, unless the Senate should otherwise determine. The only question which he will decide is, whether the new proposition, should any such be made, be of a character to justify its submission to the Senate for their previous advice.

I repeat that, under all the circumstances by which you may be surrounded, it is left to your sound discretion whether any such communication or intimation shall be made to Lord Aberdeen.

On the same date as that of the instruction last quoted (January 29, 1846), a significant conversation took place between McLane and Aberdeen; the interview was asked by the latter; the particular circumstance which afforded a reason for the invitation was the receipt in London of the text of Buchanan's note to Pakenham of January 3, 1846, declining the first proposal of the latter for arbitration; the Queen's speech had been delivered to Parliament a week earlier (January 22), and the debate in the Commons had indicated that "the rejection of the proposition [of July 12, 1845] by Mr Pakenham, without sending it to his Government, at least as the basis of negotiation is strongly disapproved by both parties" (D.S., 56 Despatches, Great Britain, No. 34, February 3, 1846; see Hansard, 3d series, LXXXIII, 152–54, January 23, 1846); in the despatch cited McLane gives an account of his conversation with Aberdeen, including its very frank disclosure of the extent of the British naval preparations; and he then, in language guarded but explicit, states the outline of "an adjustment" which he had "a strong conviction" was "entirely practicable"; that he was stating reasoned and well-grounded conclusions regarding the view of the British Government is obvious; relevant paragraphs of the despatch follow:

In consequence of the invitation contained in the accompanying note of the 28th January, I had an interview with the Earl of Aberdeen the day following. His object was to acquaint me, that by the Packet ship which left New York on the 8th of January, he had received a Despatch from Mr Packenham, transmitting the answer, which by the direction of the President, the Secretary of State had given to the proposal for submission to arbitration of the Oregon question; and to explain the impression which that answer, and the recent proceedings, and debates in the House of Representatives had produced upon his mind.

He stated that the answer of the Secretary had added to the embarrassments previously existing; and, although I am yet convinced that he could have entertained little, if any hope that the proposal would have been accepted, he complained of the terms and manner in which it had been declined. He insisted that, by the terms of Mr Packenham's proposition, a reference to arbitration would necessarily have involved a consideration of the title, and said, that the principal ground on which it had been rejected was of too technical a character, and not just to the spirit of peace, and the anxious desire to make an occasion for re-open-

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ing the negotiation, in which he had directed it to be made. He apprehended that, from the nature of the answer, and the character of the recent debate in the House of Representatives, it would be difficult to prevent the conclusion that the President had determined to discourage any new proposition on the basis of compromise, and to concede nothing of the extreme demand; and he appeared not a little embarrassed to know what course it would be proper for this Government, in the present posture of the affair to pursue. He remarked further that, although he would not abandon the desire or the hope that an amicable adjustment might yet be effected, and peace preserved, he should nevertheless feel it his duty to withdraw the opposition he had hitherto uniformly made to the adoption of measures, founded upon the contingency of war with the United States, and to offer no obstacle in future to preparations which might be deemed necessary, not only for the defence and protection of the Canadas, but for offensive operations. In the course of the conversation, I understood that these would consist, independent of military armaments, of the immediate equipment of thirty sail of the line, besides steamers and other vessels of war; and this information Lord Aberdeen appeared to think, he was called upon to communicate, in consequence of assurances he had given me in a former interview, and contained in my Despatch of the 3rd of January.

Although I was not insensible of the delicacy of my position, in the present state of our relations, I felt it a duty to express my dissent from the view entertained by Lord Aberdeen of your answer to Mr Packenham. The only question proposed by Mr Packenham to be referred was an equitable division of the Oregon territory, and if in making a division, the arbitrator was not prohibited from considering the 'title' he would be under no obligation to do so; and that although he should be entirely satisfied that the title of the United States to the whole was indisputable, he would be compelled, nevertheless, to divide the territory between the two nations. I also reminded him of the assurance I had more than once given him that in my opinion the President could not consent to an arbitration; and that if under any circumstances that mode of settlement could be admissible, it could only be the question of title exclusively, and not of division.

Nor could I admit that in the other paragraphs in your letter, there was anything to discourage a renewal of the negotiation, or the making of a new proposal by this Government. It appeared to me, on the contrary, that the insertion of them, would have been unnecessary, unless as a proof of the President's disposition, while he was constrained to decline the offer of arbitration, not to close the door to a proposition of a different character, if this Government should think proper to make it.

Although it was quite obvious to me, in the course of the conversation, that if the proposal to refer had been declined upon terms which, in the opinion of Lord Aberdeen, had not discouraged a further attempt to renew the negotiation, he would, as I have heretofore anticipated, have promptly submitted another proposition, it was equally apparent that, in the present posture of the affair, he is not prepared to do so, at least immediately. Indeed, he did not conceal his impression that, he regarded his path as beset with difficulties, of too grave a character to be suddenly surmounted, and it is quite certain, I think, that nothing further will be attempted, until after the arrival of the Boston steamer of the 1st Instant.

Notwithstanding these difficulties, I still entertain the opinion that it would be in my power, without any improper commitment of the President to lead to a renewal of the negotiation by this Government, and to the submission, unless another mode would be more desirable, through its Minister at Washington, of a proposition adopting that directed by the President, on the 12th of July last, with some modifications not inconsistent, according to the sense I entertain of it, with our national honor. Of this I should feel quite certain, if I could officially know that the proposition would probably be acceptable at Washington; and I should attempt it informally, and upon my individual responsibility, with scarcely less confidence of success, if, while acting in that way, I could encourage a like result.

It is due, however, to my own position, and to those with whom I am brought into intercourse upon this subject to state, that the opinions I have thus expressed,

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are not founded upon any direct communication from those in official station; but are rather the result of a series of facts and inferences, entitled, however, in my judgment at least, to not less weight.

After these observations, I owe it, more particularly to myself, to state that, beleiving from the history of our previous negotiations, as to the Oregon question, that it may now be settled upon the basis of compromise, and with reference to interests which have grown up during the joint occupation of the territory, without a violation of any duty which a public man owes to the rights and honor of his country, I would not be unwilling, taking the President's proposition of the 12th July as a basis, to urge a final adjustment of the question according to that proposition, but conceding to the Hudson's Bay Company a continuance of the privileges of joint occupation, including the navigation of the Columbia, for a period of seven or ten years longer; and I hope I may be allowed to add that, I would be willing to assume the responsibility of assenting to an adjustment by extending the boundary to the Pacific by the 49th parallel, and the strait of Fuca with free ports to both nations; or by extending the free navigation of the Columbia river for a longer period, provided similar advantages upon the St Laurence could thereby be secured to the United States.

I beleive that upon one of these grounds, perhaps upon either, an adjustment may be concluded, and I have a strong conviction, that the mode first indicated is entirely practicable.

I am, however, constrained at the same time to state, from all that has come to my knowledge here, that I have no reason to beleive that more favorable terms, than those I have above adverted to, would under any circumstances be consented to by this Government.

The answer, of February 26, 1846, to the foregoing despatch was drafted by Buchanan and, in general, embodied his views (Polk's Diary, I, 244–46, 253, February 24 and 25, 1846); opening with a statement of the reasons for rejecting any arbitration of the Oregon question (some of which had been omitted, by direction of Polk, from the note of February 4 to Pakenham; see *ibid.*, 208–9), which McLane was authorized to "use as occasion may require", the instruction treated at some length as "three propositions" the terms outlined in the despatch of McLane of the previous February 3; two of these were approved (i.e., approved for submission to the Senate), namely (taking the parallel of 49° north latitude as the mainland boundary), the concession to the Hudson's Bay Company of privileges, including navigation of the Columbia River, for a period of years, and the yielding to Great Britain of the southern "cap" of Vancouver Island (but without "free ports to both nations"); but the alternative suggestion of McLane regarding the Columbia, an extension of navigation rights on that river for similar rights on the St. Lawrence, was rejected. Polk was now ready to submit to the Senate any proposal of the British Government which he thought not "wholly inconsistent with the rights and honor of the country"; it was admitted that the Senate debates (on the joint resolution for the abrogation of the convention of August 6, 1827, Document 56) showed the sentiment of that body to be in favor of settlement on the basis of 49° north latitude; the views in favor of compromise entertained by various Democratic Senators and "by the Whig party [1] generally" were being urged on Polk at this

[1] Of the 56 Senators, 25 were Whigs and 31 were of Polk's party; but there were factions in the Democratic majority.

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time (see Polk's Diary, I, 246–56, February 24–27); and Polk was well aware that senatorial opinions, even beyond those expressed in debate, were known to the British Government. Relevant paragraphs of the instruction of February 26, 1846, follow (D.S., 15 Instructions, Great Britain, 299–308; Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 40–44):

As a friend of peace with Great Britain, the President regrets that Lord Aberdeen should have determined to withdraw his opposition to the preparation of armaments, "founded upon the contingency of war with the United States." Should a fleet of "thirty sail of the line, besides steamers and other vessels of war," be equipped and appear on our coasts, such a demonstration,[1] as you well know, would set this country in a blaze. So far from intimidating the American People, the idea that it was intended to operate upon their fears, would arouse the national indignation to such a degree as to render any compromise of the question altogether hopeless. If Lord Aberdeen be, as I do not doubt he is, sincerely the friend of peace, he will reconsider his determination.

You strongly express the opinion, notwithstanding the existing difficulties, "that it would be in my [your] power, without any improper commitment of the President, to lead to a renewal of the negotiation by this [the British] Government, and to the submission, unless another mode would be more desirable, through its Minister at Washington, of a proposition adopting that directed by the President on the 12th July last, with some modifications not inconsistent, according to the sense I [you] entertain of it, with our national honor. Of this I [you] should feel quite certain if I [you] could officially know that the proposition would probably be acceptable at Washington."

The concluding paragraph of my despatch to you, of the 29th ultimo (No 22) which you will have received shortly after making this suggestion, is perhaps sufficient to indicate the course which the President would pursue, in case such an offer should be made through the British Minister at Washington.

The President, since the date of his message, has seen no cause to change his opinion, either in regard to our title to Oregon or to the manner in which it ought to be asserted. But the Federal Constitution has made the Senate, to a certain extent, a coördinate branch of the treaty-making power. Without their advice and consent, no treaty can be concluded. This power could not be entrusted to wiser or better hands. Besides, in their legislative character, they constitute a portion of the war-making, as in their Executive capacity they compose a part of the treaty making power. They are the representatives of the sovereign States of this Union, and are regarded as the best index of the opinion of their constituents. A rejection of the British ultimatum might probably lead to war, and as a branch of the legislative power, it would be incumbent upon them to authorize the necessary preparations to render this war successful. Under these considerations, the President, in deference to the Senate, and to the true theory of the constitutional responsibilities of the different branches of the Government, will forego his own opinions so far as to submit to that body any proposition which may be made by the British Government, not, in his judgment, wholly inconsistent with the rights and honor of the country. Neither is the fact to be disguised, that, from the speeches and proceedings in the Senate, it is probable that a proposition to adjust the Oregon question on the parallel of 49° would receive their favorable consideration.

But it is necessary to be more explicit.

In your despatch you have presented three propositions, either of which you believe the British Government would be willing to make, for the adjustment of the controversy: and you express "a strong conviction that the mode first indicated is entirely practicable." The first would offer an adjustment of the question on the basis of the President's proposition of the 12th July last; "but

[1] No such "demonstration" had even been hinted at by McLane in his despatch No. 34, of February 3, 1846, cited above, to which this instruction here refers; McLane answered that he was "not a little surprised at the interpretation you have given" (see D.S., 56 Despatches, Great Britain, No. 36, March 17, 1846).

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conceding to the Hudson's Bay Company a continuance of the privileges of joint occupation, including the navigation of the Columbia for a period of seven or ten years longer." The proposition made by the President to which you refer was, "that the Oregon territory shall be divided between the two countries by the forty-ninth parallel of north latitude, from the Rocky Mountains to the Pacific Ocean; offering at the same time to make free to Great Britain any port or ports on Vancouver's Island, south of this parallel, which the British Government may desire."

The President would feel no hesitation in presenting to the Senate, for their previous "advice and consent," this proposition, modified according to your suggestion.

It is necessary, however, that there should be a clear understanding of what is meant by "a continuance of the privileges of joint occupation." If this be understood as securing to the Hudson's Bay Company, during that limited period, no more than the privilege of enjoying all their existing establishments, together with that of hunting, fishing, and trading with the Indians, and using the harbors and rivers south of the parallel of 49°, this would not prevent the President from submitting such a proposition to the Senate. Of course similar privileges would be extended to American citizens north of 49°, if there be any such north of that parallel, which is doubtful. But no concession could be made to this company which would, in the mean time, deprive the United States of the power to establish a territorial Government over the whole country south of 49°, and to make grants of land south of this parallel. The President cannot, however, anticipate any possible change of circumstances which would induce him to submit such a proposition, if it should contain a surrender to Great Britain of the perpetual right to navigate the Columbia. A grant of the free navigation of the St. Lawrence to the United States would be no equivalent for such a concession. Indeed this has become comparatively valueless, in consequence of the construction of the railroads and canals leading to the harbors of New York and Boston, which have rendered these the great channels of import and export for the region within the United States watered by the St. Lawrence and its tributaries.

The President is desirous so to adjust the Oregon question as not to leave open any source from which might proceed new difficulties and new dangers, again to threaten the peace of the two countries. If the free navigation of the Columbia were granted to Great Britain, this would become a perpetual cause of strife and collision between the citizens and subjects of the two countries. It would be almost impossible, by any vigilance which could be exerted, to execute their respective revenue laws and prevent smuggling on either side of the river. Besides, there are several portages around the falls and rapids of this river and its branches, the use of which would be necessary to the enjoyment of its free navigation. This would introduce the subjects of Great Britain, with their merchandise, into the heart of the country, and thus greatly increase the mischief beyond what it would be if they were confined to the channel of the river. To estimate the evils which would attend such a concession, we have but to imagine what would have been the consequences had the British Government succeeded in securing for its subjects the free navigation of the Mississippi from its source to its outlet in the Gulf of Mexico.

The President would also consent, though with reluctance, to submit to the Senate the second proposition suggested by you, dividing the territory in dispute between the two countries, "by extending the boundary to the Pacific by the forty-ninth parallel and the Strait of Fuca"; but without the superadded words "with free ports to both nations." These words are indefinite, and he cannot infer from them the extent of your meaning. In case the first proposition to which you refer should be made by the British Government, the President would not object to the terms of his offer of the 12th July last "to make free to Great Britain any port or ports on Vancouver's Island south of this parallel, which the British Government may desire." If the cap of this island should, however, be surrendered to Great Britain, as would be the case under the second proposition, then he would consider the question in regard to free ports as terminated. I need not enlarge to you upon the inconvenience, not to say impossibility, under our system of Government, after one or more States shall have been established

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in Oregon, (an event not far distant,) of making any of their ports free to Great Britain or any other nation. Besides, our system of drawbacks secures to other nations the material advantages of free ports without their inconveniencies.

There is one point which it is necessary to guard, whether the first or the second proposition should be submitted by the British Government. The Strait of Fuca is an arm of the sea, and under the public law all nations would possess the same right to navigate it, throughout its whole extent, as they now have to the navigation of the British Channel. Still, to prevent future difficulties, this ought to be clearly and distinctly understood. It is rendered the more necessary when we recollect that the Russian Government, not many years ago, asserted a claim to the exclusive navigation of the Northern Pacific Ocean, between its Asiatic and American territories, on the principle that it was "a close sea"!

From what I have said, you will perceive that the third proposition to which you refer would not meet the approbation of the President, even to the extent of submitting it to the Senate.

Thus, I have presented a frank and unreserved exposition of the views of the President on this important subject. To what extent you should communicate them to Lord Aberdeen is left entirely to your own discretion. The President relies with implicit confidence on your sound judgment, prudence, and patriotism.

A private letter of Buchanan to McLane of February 26, 1846, the same date as the foregoing instruction, includes these paragraphs (Moore, Works of James Buchanan, VI, 385):

By my Despatch you will be made distinctly acquainted with the ground which the President has determined to maintain on the Oregon question; and I do not perceive, after what has passed, how he could do more than submit a British proposition based on the parallel of 49 to the Senate. From all I can learn, there is not the least doubt but that either of the two propositions specified in my Despatch would receive the previous sanction of a constitutional majority of that Body. I say *the previous sanction*, for reasons which I have not the time to give you.

All that I apprehend is that the B.G. in their offer may insist on the perpetual free navigation of the Columbia. This would indeed be truly embarrassing; and all your diplomacy should be exerted to prevent it. The President would not present such a proposition to the Senate, unless he should greatly change his mind; and if he should, I do not believe that two thirds of that Body would give it their sanction.

In his despatch of March 3, 1846 (D.S., 56 Despatches, Great Britain, No. 35), written after the receipt of the instructions of January 29, but of course without knowledge of those of February 26, McLane, on the basis of his conversation with Lord Aberdeen of February 25, thus reported even more fully and specifically the terms of a possible agreement:

Nevertheless, deeming it of importance that I should, with the least possible delay, communicate any information in my power concerning the subject of your Despatch [instruction of January 29, 1846], I sought and obtained an interview with Lord Aberdeen on the 25th of February. Of course no allusion whatever was made to your Despatch; and, the conversation on my part was altogether informal, though for that reason, perhaps, less constrained than might otherwise have been necessary; so that while it was not less calculated to attain your object, it could not in the remotest manner improperly commit the President.

It is my duty to state that the difficulties in the way of a satisfactory adjustment of the Oregon question do not diminish; and that, in my opinion, the subject is not less critical than at the date of my last despatch.

It is very certain that this Government will make no further attempt to renew the negotiation, until your written answer to Mr Packenham's second proposal to arbitrate, is received here, and that, whatever may be attempted afterwards

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will depend very much upon the character of that answer. Lord Aberdeen again complained of the withdrawal of our proposition by the President, before knowing whether this Government would approve its rejection by Mr Packenham; and, considering that step as not only unusual, and inconsistent with the nature of our previous negotiations, he thought it was to be regarded as indicative of the President's indisposition to settle the question upon the basis of compromise. He stated that nothing being left, after the withdrawal of the proposition, on which to base a further overture, this Government had no alternative, consistent with national pride, than to propose arbitration; being ready, if that should be rejected as on a former occasion, or, in terms calculated to encourage a renewal of the negotiation, to submit a further proposition for that purpose. He continued to think it difficult, if not impossible, to regard your answer to Mr Packenham's first proposal to arbitrate in that light, especially as the answer had been given with a knowledge of the disapprobation with which Mr Packenham's rejection of our proposition had been received by his Government. Under these circumstances, he thought there was a greater necessity of waiting to ascertain upon what grounds, and in what terms, the second proposal to arbitrate would be refused; observing that inasmuch, as the answer would be given with a knowledge of the temper with which the President's message had been received in this country, it was not unreasonable to expect that it would be of a correspondent tone. If your answer be of this character, and such as, in the opinion of this Government, to encourage a renewal of the negotiation, I have no doubt that Mr Packenham will be instructed to submit a further proposition for an equitable division of the territory in dispute; and I think it altogether probable that the proposition when made will be in the nature of an ultimatum.

I understood Lord Aberdeen to state, however, that, if by your answer no sufficient encouragement be held out to renew the negotiation on the basis of compromise, it would not be possible for him to make a further attempt for that purpose, at least at Washington. Indeed, he said that, in that case, he thought it would only remain for him to consider whether he could escape from the embarrassment in which he would then be placed, by offering a proposition through me. To this intimation, I could only reply that as my instructions had not contemplated such a crisis, it would be time enough for me, to determine upon my course, when the necessity should actually arise.

From this statement, the President will have it in his power to consider and decide, whether he will deem it expedient in anticipation to furnish me with instructions best adapted, in his opinion, to the contingency to which I have adverted.

It was evident to me that Lord Aberdeen thought a termination of the negotiation upon the rejection of the several propositions to refer, would not be less favorable to this Government, than if it should follow any new proposal of compromise; and I have no doubt that in this view he will be fully sustained by the public opinion in England. It may be proper to observe here, that in acquainting you with the nature of the interview with Lord Aberdeen, I deem it sufficient to confine my remarks chiefly to the views entertained by this Government, as being of the greatest importance to be communicated to the President, without detailing at much length, the observations which I may have felt it my duty occasionally to make in reply.

In the course of the conversation the character of the partition contemplated by this Government, or, most likely to be acceptable to it, was more distinctly foreshadowed than on previous occasions. It is quite certain, I think that the proposition made by Mr Gallatin in 1826–7, unless with modifications will neither be renewed nor assented to, by Great Britain. Lord Aberdeen very distinctly said that, he would have a right, and deem it only proper to consider the several propositions made by the negotiators respectively at that time, as yet affording a basis for further negotiation; and supposing that neither Government could honorably accept now, the precise offer it then refused, he should insist that the respective propositions made on that occasion, should be treated as starting points; and that both nations should consent to such modifications, as while they effected an equitable partition would save the honor of each.

On the whole, therefore, I have little or no expectation that, this Government will offer, or assent to a better partition, than the extension of a line on the 49th

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parallel to the straits of Fuca, and thence down the middle of the strait to the Pacific; and, if the line of the 49th parallel should intersect the Columbia, according to Mr Gallatin's proposition, at a point from which it is navigable to the ocean, with the free navigation of that river, at least for such period as may be necessary for the trade of the Hudson's Bay Company. They will also, I am quite sure, expect some arrangements for the protection of the present agricultural settlements of British subjects south of the 49th degree of latitude, and north of the Columbia. If the Columbia river be not navigable from the point at which it would be intersected by the extension of a line along the 49th parallel, I beleive it quite certain that the navigation of the river would not be insisted upon. Proceeding upon the supposition which I could neither admit nor deny with positiveness, that the river was navigable from that point, Lord Aberdeen appeared to consider that the right of freely navigating it by British subjects, without limitation, as an essential condition: and when, reminding him of the explicit terms in which the President in his Message had declared that he could not concede that privilege, I expressed the opinion that if, after that declaration he persisted in treating it as a sine qua non, the question might be deemed at an end, he observed that, having by the Treaty of Washington [Document 99, Article 3] mutually conceded the free navigation of the St Johns', it was thought only reasonable that the same concession should apply to the Columbia, and that, although he was not then prepared to insist upon it as a *sine qua non*, he could entertain little expectation that any arrangement which did not allow to British subjects the free navigation of that river, could be made acceptable to his Government. He was at the same time more explicit (in reply to an observation from me) in declaring that it would be impossible, under any circumstances, to treat of the navigation of the St Laurence river in connection with that of the Columbia.

For myself, I have never considered that, independently of the supposed point of honor, there could be any substantial motive on the part of this Government, for insisting upon a stipulation for the free navigation of the Columbia, for a longer period than might be necessary for the trade of the Hudson's Bay Company with the Indians. Indeed it appears to me, to say nothing of the shallowness, and other obstructions of the river, that the importance of any conventional stipulation for the free navigation of it, even during that period, is greatly exaggerated. I would never for a moment allow any doubt to be expressed of our right, according to the soundest principles of natural law, to the free navigation of the St Laurence; and although Great Britain may not consent by conventional stipulation, to recognize it, she will never venture practically to deny it, any more than she would resume the practice of impressment, without the certainty of war. As long however, as she persists in retaining the right of control over the St Laurence, she would be enabled by that means at any time to counteract any interdiction by the United States, of the free navigation of the Columbia, and, it may be presumed, at no greater hazard than she would now continue to insist upon it, as an indispensable condition to the settlement of the Oregon question. I confess I cannot help thinking that this consideration deserves to be seriously weighed by both Governments, in the importance they may respectively attach to any stipulation for the free navigation of the Columbia. However may this be, I will not beleive, until it can no longer be doubted, that Great Britain will, at the certain consequence of war insist upon the navigation of the Columbia, for a longer period than may be really required for the reasonable accommodation of those rights of her subjects, which have grown up during the joint occupancy. To that extent, she might consider a just protection of such rights as involved in the point of honor; and I should hope we might make the concession, to a reasonable extent, without any sacrifice of our own rights or honor. Is it probable that, within a period of ten or fifteen years, it would be an object with the United States, on any ground whatever, to assert the right of navigating such a river as the Columbia to the exclusion of the trade of all other nations?

In connection with this part of the subject, I take leave to suggest that, immediate steps should be taken, as far as may be practicable, to ascertain the actual state of the branches of the Columbia river on the 49th parallel. Without being able to obtain very accurate information here, I have always been under an impression that from that point neither branch was navigable, unless for small canoes, and that, between the 49th parallel and the ocean, there were some inter-

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vening rapids, which would make it necessary for those attempting to use it, to and from the sea, to occupy parts of our territory as portages. If this should prove to be so, there would not remain a shadow of claim to the use of the river; indeed, as I have already remarked, I am quite sure that it would not be insisted upon.

It was very obvious, from the whole tenor of the conversation in the interview with Lord Aberdeen, that he had taken up an impression, for reasons which, perhaps, were not fully disclosed, that independently of the propriety of waiting to see your answer to Mr Packenham's last proposal, some further delay, before attempting to renew the negotiation, would not be disadvantageous; and would rather promote than defeat a satisfactory adjustment; and my opinion to the contrary, which I expressed and strongly supported, as well for the reasons stated in your Despatch, as for others, did not seem to shake his impression. He has doubtless, sources of information in the United States, upon which it is to be expected, he will place more or less reliance. I rather think also, that he has been led to regard it as doubtful, whether the notice to terminate the joint occupation will be authorized by Congress without material modifications; and he expects that the measures of commercial relaxation, now in progress here, will have a beneficial effect upon public opinion in the United States, and render it more disposed to preserve the advantages of peace. He took occasion also to express his confident hope, and indeed, his beleif that, notwithstanding the rejection of Mr Packenham's proposals to arbitrate, yet, rather than take the responsibility, under all the circumstances of the case, of involving the two nations in war, our Government would ultimately agree to arbitration, in some form or other. It was very evident that his confidence upon the point had been encouraged by advices from the United States, and that it could hardly fail to exert no small influence upon his mind. I, therefore, deemed it my duty, in pursuance of your Despatch, to assure him, that from my knowledge of the sentiments of the President, and of a majority of the Senate, a submission of the question to arbitration, under any circumstances, was altogether hopeless, and ought not again to be thought of.

It is not improbable, either, although no allusion was made to the subject, that our present and probable difficulties with Mexico, may serve to recommend further delay, if in fact, they should not influence the ultimate demands upon the part of this Government.

I must however, repeat the opinion that, whatever may be the result of any present expectation, and according to any view it may take of the question, this Government will not be likely to propose, or assent to a basis of partition, different from that I have already stated in the foregoing part of this Despatch. If there be a disposition on the part of our Government to treat upon that basis, I have great confidence that the negotiation would result in an amicable settlement of the question. If, on the contrary, it be their determination to insist upon the whole; or, in no event, to surrender the Southern point of Vancouver's Island, and, for no length of time to allow the navigation of the Columbia, then, it is my duty to say that, in my opinion an amicable adjustment of the question may be considered as absolutely hopeless; and, that no time should be lost in placing the country in a state of preparation for the crisis, that would inevitably follow, and as I believe, not remotely.

While in general the terms of possible accord stated in the foregoing despatch (received in Washington on March 21) were similar to those set forth in the despatch of February 3 (which the instruction of February 26 had answered in some detail), the language was more definite and precise. The conditions of adjustment deemed essential by the British Government were now almost as certainly known at Washington as if they had been stated in corresponding language in a diplomatic note. What was open in them was the extent and term of the right of navigation of the Columbia River; and there was a

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clear and explicit warning from McLane that if that right was not to be yielded to any extent or for any period and if the line of 49° north was to be insisted on across Vancouver Island to the Pacific, the result would be war.

However, no further communication to McLane regarding terms of settlement was deemed necessary at Washington. The recorded comment of Polk on the despatch of March 3 is merely that "the delay of Congress to act upon the recommendations of my message on the Oregon question had operated prejudicially in England" (Polk's Diary, I, 294, March 21, 1846); and the answering instruction, of March 28, went no further than to refer to the previous instruction of February 26, to authorize McLane "to receive and transmit to this Department any proposition made" by Aberdeen, although "in no event will the President consent to transfer the negotiation to London", and to give some information regarding the navigability of the Columbia River and its branches north of the parallel of 49° (D.S., 15 Instructions, Great Britain, 308–10, March 28, 1846; Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 44–45).

Polk remained firm in his insistence that he "could make no proposition" (Polk's Diary, I, 313, March 30, 1846), as he said in answer to Calhoun, who remarked that "a question of etiquette ought not to prevent either from reopening the negotiation by a new proposition"; but Polk remained also committed to refer to the Senate for advice any British proposal which approximated the American offer of the previous July 12; and that he had in mind the terms suggested by McLane in his latest despatch is shown by his conversation with Senator Benton of April 9, 1846 (*ibid.*, 324–25):

> Col. Benton introduced the Oregon question, submitting a map[1] which he had brought with him published by Congress with [the report of] Capt Wilkes's exploring Expedition in 1841, on which was marked in dotted lines the parallel of 49°. Col. B. repeated the opinion which he had before expressed to me that our title was best to the valley of the Columbia & he would fight for it before he would give it up. He thought the British title best to Fraser's River. His opinion was that the basis of 49° was the proper line of settlement. I repeated what I once before said to him, that if Great Britain offered that line, or if she offered it retaining to herself the Southern cap of Vancouver's Island & the temporary navigation of the Columbia River for a term of years, that in either case I would submit the proposition to the Senate in Executive Session and take their advice before I acted on it. Col. B. said that in either case he would advise its acceptance. I expressed to him as I have uniformly done to others that the Notice should be given speedily & regretted the delay. I told Col. B. that I had no expectation that Great Brittain would make any proposition until Congress passed the Notice; that as long as she calculated on our divisions she would make no movement & there would be no prospect of a settlement.

As has been seen, the discussions at London between Aberdeen and McLane had fixed the essential conditions of a British offer within rather narrow limits. Public debates on the Oregon question in the

[1] "Map of the Oregon Territory by the U.S. Ex. Ex. Charles Wilkes Esqr. Commander. 1841", which is in the atlas of Wilkes, Narrative of the United States Exploring Expedition. It will be observed that one line of dashes and dots upon this map follows the parallel of 49° from the eastern edge of the map to the crest of the Rocky Mountains but not west of that point; a similar line follows the parallel of 54°40′ from the crest of the Rocky Mountains to the sea.

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Senate had made it known that the preponderating sentiment in that body was in favor of an adjustment on the basis of a mainland boundary of 49° north latitude; and as the papers laid before the House of Lords on April 7, 1846, showed (London Times, April 8, 1846; Blue Book, 1846, "Correspondence Relative to the Negotiation of the Question of Disputed Right to the Oregon Territory, on the North-west Coast of America; Subsequent to the Treaty of Washington of August 9, 1842", 68–69, 71; see also D.S., 56 Despatches, Great Britain, No. 41, April 17, 1846), and as McLane's despatches had reported, the British Government did not waver in its decision to make a fresh proposal if and when an occasion deemed suitable arose. It had been hoped at London that such an opportunity would be afforded by the American answer (February 4, 1846) to the second British proposal of arbitration (January 16, 1846; strictly not a proposal, but a suggestion of Pakenham later approved by Aberdeen; D.S., 56 Despatches, Great Britain, No. 41, April 17, 1846); but because of the wording of that answer (received in London on March 3) and also because of the Senate debates, the British Government decided to await the vote of the Senate on the resolution for the termination of the convention of 1827 before making its offer (*ibid.*, especially the postscript of April 18; also No. 36, of March 17, and No. 37, of April 3, 1846).

In Washington, however, it could not at the time be certainly known that the British Government would make a proposal; and the message of March 24, 1846 (Richardson, IV, 426–28), in response to a Senate inquiry, recommended an increase of naval and military forces by reason of both the Oregon question and relations with Mexico; and, while communication with the British Government had continued by means of the important conversations had at London between McLane and Aberdeen, Polk was able, with literal accuracy, to inform the Senate on April 13 (*ibid.*, 429) that "no correspondence" on the Oregon question had taken place[1] "since the date of the last documents" transmitted to both Houses with the messages of February 7, 1846, namely, those in which arbitration was twice offered and refused (December 27, 1845, to February 4, 1846; Senate Document No. 117, 29th Congress, 1st session, serial 473; House Document No. 105, same session, serial 483).

The President was to place the responsibility of decision on the Senate; the views of the British Government and of the Senate regarding an adjustment of the Oregon question were very similar; but the British Government was awaiting a vote of the Senate, and the President, willing to chance a change of administration at London, was awaiting a proposition from the British Government; the "point of etiquette" delayed any move, while war between the United States and Mexico was approaching (May 13, 1846; 9 Statutes at Large, 9–10; the decision of Polk for war was definite four days earlier; Polk's Diary, I, 384–87).

[1] See Webster's comment that there might have "been correspondence between the Department of State and the American Minister in London" (Congressional Globe, XV, 660, April 13, 1846).

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NAVIGATION OF THE COLUMBIA RIVER

As has been said, the one point (of the proposal to be made) still open at London was the extent of the right of navigation of the Columbia River; a demand for such a right, if both permanent and general, was liable to be rejected by Polk without reference to the Senate; limitations either of scope or of time were possible; McLane was arguing for both; after interviews with Aberdeen on April 28 and 29, he wrote on the subject as follows (D.S., 56 Despatches, Great Britain, No. 43, May 3, 1846):

His object in desiring to see me appeared to be chiefly to acquaint me with the receipt of despatches by the New York Packet of the fifth April, and to recur to the impracticability of an attempt, on his part, to reopen the negotiation for the partition of the Oregon by a new offer, before he learned the vote of the Senate upon the resolutions of notice; and also to repeat his regret that so much delay should have intervened.

There is no doubt, however, that as soon as he is informed of the Senate's vote he will immediately proceed finally to consider the subject and direct Mr Pakenham to submit a further proposition upon the part of this Government; and when in the course of the conversation I intimated the possibility that the Senate's resolutions might vary from those of the House of Representatives and therefore, require to be reconsidered by that body, he consented, in that case, to proceed without waiting for the further action of the House. I thereupon suggested that, as there could be no doubt that the resolutions had already passed the Senate, Mr Pakenham should be immediately instructed to offer in this contingency his proposition. This suggestion, however, did not appear to receive His Lordship's approbation; and I confess that, under all the circumstances, I could think of no other means which I thought it prudent to propose, or in which I could, with propriety, acquesce in order to effect an earlier proceeding.

. . . . . .

The precise terms, in detail, of the new proposition which Mr Pakenham will be instructed to offer did not transpire during my interview with Lord Aberdeen, and, I am inclined to believe, have not yet been definitively settled in his own mind. The demand to the permanent right of freely navigating the Columbia river, however, was adverted to and the grounds of the demand, as well as the objections to its' allowance were pretty fully considered. It is unnecessary for me to refer to them *in extenso* in this place, and I will content myself with remarking that, in the end, Lord Aberdeen promised to take the subject into his serious consideration and consult Sir Robert Peel; he did not conceal his apprehensions, however, that this might prove a point of great and serious difficulty. I refer to this point, at present, mainly to reassure you of my conviction that it is regarded here as in some degree involving their pride and honor, and therefore more difficult to be compromised than any other; and that the expectation is entertained, probably, and naturally, from advices received from their Minister at Washington, that ultimately there will be less hesitation on the part of the Senate in yielding this point than I have uniformly represented. I do not think I can be mistaken in this.

Indeed Lord Aberdeen again recurred to the main position, he has uniformly maintained, that he had the right to consider the offers in the negotiation of eighteen hundred and twenty six and eighteen hundred and twenty seven as subsisting, and as affording the basis or starting points of the present negotiation; and that beyond what was then offered each party, as a salvo to the honor and pride of the other, should now be required to make some further concession than was formerly proposed. And he referred to the speeches of certain Senators during the recent discussion at Washington as sustaining the same view.

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The British Proposal Made and Accepted

The joint resolution for abrogation of the convention of August 6, 1827 (Document 56), as amended by the Senate, passed that body on April 16, 1846. In its earlier form it had been adopted in the House of Representatives on February 9. The final vote in both Houses was on April 23; presidential approval followed on April 27; and these proceedings were known in London by May 15. A conference between McLane and Aberdeen was at once had (some time between May 15 and 18; May 17 was Sunday); McLane reported thereon as follows (D.S., 56 Despatches, Great Britain, No. 44, May 18, 1846):

I have now to acquaint you that, after the receipt of your Despatches on the fifteenth Instant by the "Caledonia", I had a lengthened conference with Lord Aberdeen; on which occasion the resumption of the negotiation for an amicable settlement of the Oregon question, and the nature of the proposition he contemplated submitting for that purpose formed the subject of a full and free conversation. I have now to state that instructions will be transmitted to Mr Pakenham by the Steamer of tomorrow, to submit a new and further proposition on the part of this government, for a partition of the territory in dispute.

The proposition, most probably, will offer substantially.—

First—To divide the territory by the extension of the line on the parallel of forty nine to the sea; that is to say, to the arm of the sea called Birch's Bay, thence by the Canal de Arro and Straits of Fuca to the Ocean, and confirming to the United States, what indeed they would possess without any special confirmation, the right freely to use and navigate the Strait throughout its' extent.

Second—To secure to the British subjects occupying lands, forts, and stations any where in the region North of the Columbia and South of the forty ninth parallel, a perpetual title to all their lands and stations of which they may be in actual occupation; liable, however, in all respects as I understand, to the jurisdiction and sovereignty of the United States as citizens of the United States. Similar privileges will be offered to be extended to citizens of the United States who may have settlements North of the forty ninth parallel; though I presume it is pretty well understood that there are no settlements upon which this nominal mutuality could operate. I have no means of accurately ascertaining the extent of the present British settlements between the Columbia and the forty ninth parallel. They are not believed by Lord Aberdeen to be numerous, however; consisting, as he supposes, of a few private farms and two or three forts and stations. I have already, in a previous despatch taken the liberty to remind you, that by their charter the Hudson's Bay Company are prohibited from acquiring title to lands, and that the occupations to be affected by this reservation have been made either by the Squatters of that company or by the Puget's Sound Land Company for the purpose of evading the prohibition of the Hudsons Bay Charter. They are in point of fact, also, according to Captain Wilkes account, cultivated and used chiefly by the persons employed in the service of the former company, and as auxiliary to their general business of hunting and trapping, rather than with a view, as it has been generally supposed, of colonizing or of permanent settlement.

Lastly—The proposition will demand for the Hudson's Bay company the right of freely navigating the Columbia river. It will, however, as I understand disclaim the idea of sovereignty or of the right of exercising any jurisdiction or police whatever on the part of this government or of the Company, and will contemplate only the right of navigating the river upon the same footing and according to the same regulations as may be applicable to the citizens of the United States. I have already acquainted you that Lord Aberdeen has very positively and explicitly declined to treat of the navigation of the St Lawrence in connexion with that of the Columbia; and that even if it were desireable to us to propose to offer one for the other, he would on no account enter into any negotiation in regard to the St. Laurence!

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From the date of a private letter to the President in August, I have seen no cause to change the opinion that, in any attempt to divide the Oregon territory, the obligation felt by this government to protect the rights of their subjects which may have been acquired, or have grown up, during the joint-occupation would most probably interpose the greatest difficulty in the way of an amicable adjustment. And it is now obvious that the proposed reservation of the right to the Hudson's Bay Company of freely navigating the Columbia, and that in favor of the British occupants North of the river, proceed from this source; although, it is probable that more or less pride may be felt at giving up now, without what they may deem an adequate equivalent, what has been hitherto tendered by our negotiators.

In fact, except in the surrender to the United States of the title of the lands not occupied by British subjects between the Columbia and the forty-ninth parallel, and also the surrender of the jurisdiction over the river and the country within the same limits, I am afraid it may with some plausibility be contended that there is no very material difference between the present proposition and that offered to Mr Gallatin by Messs Addington and Huskisson the British Negotiators in eighteen hundred and twenty seven.[1]

It is scarcely necessary for me to state that the proposition as now submitted, has not received my countenance. Although it has been no easy task, under all the circumstances, to lead to a reopening of the negotiation by any proposition from this government, and to induce it to adopt the parallel of forty nine as the basis of a boundary, nevertheless, I hoped it would have been in my power to give the present proposition a less objectionable shape, and I most deeply lament my inability to accomplish it. I have, therefore, felt it my duty to discourage any expectation that it would be accepted by the President, or, if submitted to that body, approved by the Senate.

I do not think there can be much doubt, however, that an impression has been produced here, that the Senate would accept the proposition now offered, at least without any material modification, and that the President would not take the responsibility of rejecting it without consulting the Senate. If there be any reasonable ground to entertain such an impression, however erroneous, an offer less objectionable, in the first instance at least, could hardly be expected.

It may be considered certain also, in my opinion, that the offer now to be made is not to be submitted as an ultimatum; and is not intended as such; though I have reason to know that Mr Pakenham will not be authorized to accept or reject any modification that may be proposed on our part; but that he will, in such case, be instructed to refer the modification to his Government.

It is not to be disguised that since the President's Annual Message, and the public discussion that has subsequently taken place in the Senate, it will be difficult if not impossible to conduct the negotiation in its future stages without reference to the opinion of Senators, or free from speculation as to the degree of controul they may exercise over the result. Whatever therefore might be prudent and regular in the ordinary course of things, I think it of the utmost importance, upon the present occasion, if the President should think proper to propose any modification of the offer to be made by Mr Pakenham, that the modification should be understood as possessing the concurrence of the co-ordinate branch of the Treaty power.

It is not easy to conjecture, with any certainty, the extent to which this government might be induced to modify the proposition, even if they should be assured that the Senate no less than the President demanded it. It must not escape observation that, during the preceding administration of our government, the extension of the line on the forty ninth parallel to the Strait of Fuca, as now proposed by Lord Aberdeen, was actually suggested by my immediate predecessor

[1] It is true enough, in a sense, that the "material" differences between the British proposals of 1826 and of 1846 are those which McLane states in this paragraph by way of exception; but the territorial extent of the "surrender of the jurisdiction" was great, coming to, say, 44,000 square miles, or more than half the present State of Washington, and including the region of Puget Sound; and the lands in that area "occupied by British subjects" were less than 1 percent thereof.

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[Edward Everett] as one he thought his government might accept; and that in regard to those English subjects who would be left within American jurisdiction by adopting that boundary, he considered the provisions of the second article of Jay's Treaty [Document 16] as a precedent for a convenient mode of dealing with them. By the second article of Jay's Treaty, however, British subjects would not only be secured in the absolute title to all their lands and effects as fully as by Lord Aberdeen's proposition, but would be allowed the option to continue as British subjects and without any allegiance to the government of the United States, which according to Lord Aberdeen's offer, as I understand it, they would not possess. In point of fact, therefore, the substantial points of the present offer, and those which may be expected to be regarded as most objectionable, are little more than the embodiment of the various offers or suggestions which at different times have, in some form or other, proceeded from our own negotiations.

I have myself always believed, if the extension of the line of boundary on the forty ninth parallel by the Strait of Fuca to the Sea would be acceptable to our Government, that this demand of a right freely to navigate the Columbia river could be compromised upon a point of time; by conceding it for such period as might be necessary for the trade of the Hudson's Bay Company North or South of the forty ninth parallel. Entertaining great confidence in that opinion, and deeming it only reasonable, I confess that from an early period I have used every argument and persuasion in my power to reconcile Lord Aberdeen to such a limitation; and although I am quite aware that with a portion of the British public an importance it by no means deserves is attached to the navigation of the Columbia river, and that in others it is undeservedly regarded as a point of pride, I have been disappointed by the pertinacity with which it has been at so much risk insisted upon. Feeling very sure, however, that the present offer is not made or intended as an ultimatum, I think it only reasonable to infer an expectation on the part of those who are offering it not only that modifications may be suggested but that they may be reasonably required. And, therefore, I still entertain the opinion that, although, from a variety of causes, in part, perhaps from an expectation that in the United States this point may not be absolutely insisted upon, and in part from deference to interests and impressions at home, they could not be induced in the first instance to make an offer with such a qualification, yet if the adjustment of the question should be found to depend upon this point only they would yield the demand to the permanent navigation of the river, and be content to accept it for such a number of years as would afford all the substantial advantages to those interests they have particularly in view that could be reasonably desired. If the only question upon which the adjustment of the Oregon question depended should be whether the navigation of the Columbia river should be granted for a period sufficient to subserve all the purposes of British subjects within the disputed territory, or whether the right should be extended indefinitely, to a particular class of British subjects I must believe that no English Statesman, in the face of his denial of a similar privilege to American citizens in regard to the St. Lawrence, would take the hazard upon this point alone of disturbing the peace of the world. Indeed, if the same Ministry from whom the present offer proceeds should continue masters of their own proposition, by remaining in office until the qualification I am adverting to would have to be dealt with, I should feel entire confidence in the belief I have now expressed.

I regret to say, however, that I have not the least expectation that a less reservation than is proposed in favor of the occupants of Land between the Columbia and the forty ninth parallel would be assented to. I may repeat my conviction, founded upon all the discussions in which I have been engaged here, that in making partition of the oregon territory, the protection of those interests which have grown up during the joint occupation is regarded as an indispensable obligation on the score of honor, and as impossible to be neglected. I am quite sure that it was at one time in contemplation to insist upon the free navigation of the Columbia river for British subjects and British commerce generally, and that it has been ultimately confined to the Hudson's Bay company after great resistance and in the end most reluctantly. Being so confined, however, it would be only reasonable to limit the enjoyment of the right to a period beyond

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which the company might have no great object to use the river for the purposes of their trade. But the interests of the British subjects who have settled upon and are occupying lands North [south] of the forty ninth are considered as permanent, and entitled, when passing under a new jurisdiction, to have their possession secured. This at least is the view taken of the subject by this government, and not at all likely, in my opinion to be changed.

I may add too, that I have not the least reason to suppose it would be possible to obtain the extension of the forty ninth parallel to the sea, so as to give the southern cape of Vancouver's Island to the United States.

The statement in the foregoing despatch of the terms of the forthcoming British proposal (which became the Oregon Treaty) proved to be substantially accurate; from a reading of McLane's despatch, one would not think that he had seen the text of the British proposal, but rather that he had merely heard its terms described; but Aberdeen states positively that he showed the project to McLane (instruction to Pakenham of June 29, 1846; Pakenham Papers, F.O. 115:91, No. 30; Washington Papers, V, 235–36; quoted below). In any case, it is certain that McLane received no copy of the draft; and in one respect he erred in describing its terms; the treaty has no clause of "nominal mutuality" in favor of nonexistent American settlers north of the line, as McLane thought; but that matter was one of no consequence, either at the time or later.

That McLane wrote with a map in mind (perhaps with one before him; possibly, but not probably, one seen at his conference with Aberdeen) is indicated by his mention of Birch's Bay (properly Birch Bay) and of the "Canal de Arro" (properly Haro); probably that map was one of the two maps of Wilkes of 1841 and 1845, respectively (the former has been cited; the latter is in part reproduced in Washington Papers, V, facing p. 11), for thereon "Haro" is "Arro" and Birch Bay (a small indentation of the mainland coast a few miles south of 49°) is shown as a body of water extending from Vancouver Island to the mainland; thus it appears to be an "arm of the sea", as McLane called it (see *ibid.*, 200–1). The *loci* mentioned are shown on the map facing page 100.

It appears, moreover, that at his conference with Aberdeen, McLane put forward a suggestion to modify the draft by limiting the right of navigation "to a term of years", to which the British Secretary of State for Foreign Affairs "positively declined to accede" (*ibid.*, 235–36).

McLane's despatch of May 18, 1846, reached Washington on June 3; perhaps Polk was somewhat influenced by the disapproving comments of McLane, who not only was critical of the absence of any express limitation of the term of the right of navigation of the Columbia River in favor of the Hudson's Bay Company, but who also attached undue importance to the clauses for the protection of possessory rights and titles (Articles 3 and 4). Polk wrote as follows (Polk's Diary, I, 444–45, June 3, 1846):

If Mr. McLane is right in the character of the proposition which will be made, it is certain that I cannot accept it, and it is a matter of doubt in my mind whether it [will] be such as I ought to submit to the Senate for their previous advice before acting upon it. If I reject it absolutely and make no other proposition

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the probable result will be war. If I submit it to the Senate and they should advise its acceptance I should be bound by their advice & yet I should do so reluctantly. I had a conference on the subject [with Mr. Buchanan]. He was not prepared without further reflection, as he said, to give his advice on the subject.

A discussion of the despatch in Cabinet took place the next day (*ibid.*, 447–49), when the policy was considered and objections were made to the absence of any express term for the right of navigation of the Columbia. Another meeting of the Cabinet, on June 6, had before it the text of the British proposal, delivered that day (*ibid.*, 451–55); different opinions as to the legal effect of Article 2 were put forward:

The proposition also contained two reservations, . . . secondly, that the navigation of the Columbia River shall be free, not to Brittish subjects generally but to the Hudson's Bay company and to Brittish subjects trading with that company. As the Hudson's Bay company will under its present charter cease to exist in the year 1859, a question arose whether if the charter of the company should be extended for an additional term of time this reservation as to the right to navigate the Columbia would extend beyond the life of the present company under the existing charter. Mr. Walker and Mr. Marcy expressed the opinion that the right reserved would be limited to the existence of the company under the existing charter. Mr. Buchanan expressed a different opinion, and a discussion of some length on this point arose between Mr. Buchanan and Mr. Walker. I inclined to the opinion that Mr. Walker was right on the point, but was not clear on the subject and so expressed myself.

The advice of the Cabinet was taken as to "whether the proposition should be rejected, or whether I should submit it to the Senate for their previous advice"; of the Cabinet of six, four advised the latter course (Robert J. Walker, Secretary of the Treasury; William L. Marcy, Secretary of War; George Bancroft, Secretary of the Navy; and Cave Johnson, Postmaster General; the Attorney General, John Y. Mason, was absent, but had expressed the same view; see *ibid.*, 448–49); the decision reached was in accord with that advice; and McLane was so informed in a brief instruction of the same date transmitting a copy of the proposal (D.S., 15 Instructions, Great Britain, 312, No. 33, June 6, 1846); but in the discussion in Cabinet Buchanan did not assent to the counsel of his colleagues present until Polk had remarked "that the substance of my message would be, if I submitted the proposition to the Senate, a reiteration of my opinions as expressed in my annual message of the 2d of December last, but in view of the action of my predecessors and of the debates and proceedings of Congress at its present Session, I submitted it to the Senate for their previous advice, accompanied with a distinct statement that if the Senate advised its acceptance with or without modifications I should conform to their advice; but if they declined to express an opinion, or by the constitutional majority to give their advice, I should reject the proposition" (Polk's Diary, I, 453–54); and this was after it had been "agreed that if the proposition was rejected without submitting it to the Senate that in the present position of the question I could offer no modification of it, or other proposition, and that if it was rejected and no other proposition made, war was almost inevitable". The position taken by Buchanan regarding

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the British proposal is harshly criticized by Polk as inconsistent; and there was a "very painful and unpleasant" interview between Polk and Buchanan (June 8) and another long Cabinet meeting (June 9) before the presidential message sent to the Senate on June 10 was in its final form (see Polk's Diary, I, 453–62, *passim;* in 74 Polk Papers in the Library of Congress there are three drafts of the message: the "first rough draft" at pp. 7217–20, a second draft, later "modified and copied", at pp. 7225–28, and the draft "read in Cabinet" on June 9, at pp. 7221–24; *inter se* they do not greatly differ; the second and third drafts are very similar; the language of the message sent to the Senate was taken or adapted from the draft read; but therefrom were omitted passages on the circumstances and terms of the proposal submitted and of earlier offers, shortening the message by a full moiety).

The protocol drawn up when the British draft treaty was presented to Secretary of State Buchanan, June 6, 1846, reads as follows (D.S., 23 Notes from the British Legation; Senate Document No. 489, 29th Congress, 1st session, serial 478, p. 13):

A conference was held at the Department of State on the 6th June 1846, between the Hon: James Buchanan, Secretary of State, the American Plenipotentiary, and the Right Honorable Richard Pakenham, the British Plenipotentiary, when the negotiation respecting the Oregon Territory was resumed. The British Plenipotentiary made a verbal explanation of the motives which had induced Her Majesty's Government to instruct him to make another proposition to the Government of the United States for the solution of these long existing difficulties. The Secretary of State expressed his satisfaction with the friendly motives which had actuated the British Government in this endeavor.

Whereupon the British Plenipotentiary submitted to the Secretary of State the draft of a Convention (marked A) setting forth the terms which he had been instructed to propose to the Government of the United States for the settlement of the Oregon question.

JAMES BUCHANAN
R PAKENHAM

Beyond the bare and formal record of the protocol, there is this account by Pakenham of his two meetings with Buchanan on June 6, 1846 (despatch No. 68, June 7, 1846; not in Pakenham Papers; printed in Washington Papers, V, 232–33):

Her Majesty's Government will necessarily be anxious to hear as soon as possible the result of my first communications with the United States Government, in pursuance with your Lordship's instructions of the 18th of May, on the subject of Oregon.

I accordingly take advantage of the departure of the Great Britain steamship to acquaint your Lordship that I had yesterday morning a conference, by appointment, with Mr. Buchanan, when the negotiation for the settlement of the Oregon Question was formally resumed.

As the best explanation which I could offer of the motives which had induced Her Majesty's Government to instruct me to make a fresh, and, as your Lordship hoped, a final, proposition for the solution of these long-existing difficulties, I read to Mr. Buchanan an extract from your Lordship's dispatch No. 18, beginning with the words, "In this state of affairs, it is a matter of some anxiety and doubt what steps," &c., to the end of the dispatch. It seemed to me that there was nothing in the observations contained in this part of your Lordship's instructions which might not be advantageously made known to the American Government.

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Your Lordship's language appeared to make a good deal of impression upon Mr. Buchanan. After I read to him the extract which I had prepared from the dispatch, he requested to be allowed to read it over himself, in my presence, with which request I of course complied. I thought it best not to leave a copy of it in his hands, having in view the possible, although not probable, failure of the negotiation which might render it desirable to deliver to him a copy at length of the dispatch, with a view to its ultimate publication.

I then laid before him a copy of the draught of a Convention which accompanied your Lordship's dispatch No. 19, which Mr. Buchanan said he would immediately submit to the President for his consideration. A minute of what passed between us was then drawn up and signed, with the draught of the proposed Convention formally annexed to it.

Mr. Buchanan frankly told me that, in his opinion, the only part of the proposed arrangement likely to occasion any serious difficulty, was that relating to the navigation of the Columbia, for he said that the strongest objection existed to granting the perpetual freedom of the navigation of that river. I did not fail to point out to him the great difference which existed between a perpetual and general freedom of navigation, and the qualified right of navigation contemplated in your Lordship's proposition. He admitted the force of my observations in this sense, but I collect, from what fell from him on this point, that an attempt will be made to limit the proposed concession to the duration to the existing charter of the Hudson's Bay Company.

At 4 o'clock yesterday evening I again met Mr. Buchanan, by appointment, when he told me that the President had come to the determination to submit our whole proposition to the Senate for their advice, and that it would accordingly be sent to the Senate at an early day with a Message, which Message might, and probably would, suggest some modifications of it. What these modifications might be, Mr. Buchanan said, had not yet been determined; but I imagine they will not involve anything essentially hostile to the adoption of the proposed arrangement, or which may not be overcome by friendly negotiation and explanation between the two Governments.

As relates to the Senate, my Lord, when we consider the moderate and conciliatory spirit in which the entire question of Oregon has been treated by a large majority of that body since the opening of the present session of Congress, I think it may be fairly expected that their advice to the President on the reference which is about to be made to them will rather favor than impede an early and satisfactory termination of the Oregon difficulties.

I should add that, in addition to what Mr. Buchanan said about the navigation of the Columbia, he gave it as his opinion that it would be necessary, and even advisable, with the view to avoid future misunderstanding, to define, or provide for the early definition of, the limits of the farms and lands now in the occupation of the Puget Sound Agricultural Company, and which it is proposed shall be confirmed to the Association in perpetuity. To such a proviso, if conceived in a spirit of liberality and fairness, I imagine that Her Majesty's Government will have no objection. But upon this point, as well as what relates to the navigation of the Columbia, I will act with due caution, and, to the best of my humble judgment and ability, in conformity with the spirit and intention of your Lordship's instructions, as set forth in your Lordship's dispatch No. 19.

In the foregoing report of Pakenham reference is made to two instructions which he had received (Nos. 18 and 19, of May 18, 1846), and one of which (No. 18) had been in large part read to and by Buchanan; the texts of these instructions follow (from Pakenham Papers, F.O. 115 : 91; also in Washington Papers, V, 226–29):

[Instruction No. 18]

In the critical state of the Negotiation for the Settlement of the Oregon Boundary, it has become my duty carefully to review the whole course of our proceedings, and to consider what further steps in the present juncture it may be proper to take with the view of removing existing difficulties, and of promoting, if possible, an amicable termination of the question.

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I willingly abstain from renewing a discussion, the matter for which is already exhausted, and from repeating arguments with which you have long been familiar; but I think it is not too much to assert that, to any observer, looking impartially at the different stages of this Negotiation, it will appear that the conduct of Great Britain has throughout been moderate, conciliatory, and just. Can it truly be said that the Government of the United States have advanced to meet us in the path of mutual concession?

The terms of the settlement proposed by the British Plenipotentiaries to Mr Gallatin in the year 1826 were much more advantageous to the United States than those which had been offered to Mr Rush in the previous negotiation of 1824; and on your own departure from this Country you were authorized still further to augment these advantageous conditions. The United States, on the other hand, have not only recently made, through Mr Buchanan, a proposal less favourable to Great Britain than that formerly offered by Mr Gallatin; but when this was rejected by you, they withdrew it altogether.

In truth, the pretensions of the United States have gradually increased during the progress of these Negotiations. Acting in manifest violation of the spirit of the Conventions of 1818, and 1827, it is now formally and officially asserted that the right of the United States to the whole Territory in dispute is "clear and unquestionable". The principle however of these Conventions plainly recognized the claims of both parties, as indeed was fully admitted by the American Plenipotentiary himself; and it was only on failure of the attempt to effect an equitable partition of the Territory, that the joint occupancy was established.

Such pretensions, whatever may have been their effect in the United States, cannot in any manner invalidate or diminish our own just claims. With respect to these, we have never varied. We have always maintained that we possessed the right to establish ourselves in any part of the Country, not previously occupied; but we have fully acknowledged in the United States the existence of the same right; and we have also at all times been ready, by an equitable compromise and partition, to put an end to a species of occupation which is but too likely to lead to disputes and collision.

Despairing of arriving at any agreement by means of direct negotiation, we have been urgent in pressing the reference of the whole matter to an Arbitration. We have been willing to submit, either the abstract title of the two parties, or the equitable division of the Territory, to the judgement of any Tribunal which could justly inspire confidence, and which might prove agreeable to the United States. All this, however, has been peremptorily refused; the progress of the Negotiation has been entirely arrested, and in fact it now remains without any admitted or intelligible basis whatever.

The United States have recently expressed their determination to put an end to the Convention which for the last thirty years has regulated the mode of occupation of Oregon by the Subjects of both Countries; but as this power was reserved to each party by the terms of the Convention, the decision cannot reasonably be questioned. Neither is there anything necessarily unfriendly in the act itself; but, as both parties would thus be replaced in their former position, each retaining all its claims, and asserting all its rights, which each would freely exercise, it is obvious that, in proportion as the Country became settled, local differences would arise which must speedily lead to the most serious consequences.

In this state of affairs it is matter of some anxiety and doubt what steps, with a view to an amicable settlement of the question, may be most consistent with the dignity and the interests of Great Britain. After all the efforts we have made, and the course we have pursued, we might perhaps most naturally pause, and leave to the United States the office of renewing a negotiation which had been interrupted under such circumstances. But Her Majesty's Government would feel themselves to be criminal, if they permitted considerations of diplomatic punctilio or etiquette to prevent them from making every proper exertion to avert the danger of calamities which they are unwilling to contemplate, but the magnitude of which scarcely admits of exaggeration.

I think that an opportunity has now arisen when we may reasonably lay aside those formal considerations by which, under ordinary circumstances, we might have been precluded from making any fresh overture or demonstration on this subject.

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In complying with the recommendation of the President to terminate the Convention under which the Oregon Territory is at present occupied, the Legislature of the United States have accompanied their decision by Resolutions of a pacifick and conciliatory character; and have clearly signified to the Executive Government their desire that this step should not lead to the rupture of amicable negotiations for the settlement of the question. I can scarcely doubt that the Government of the United States will be duly influenced by the desire thus unequivocally expressed by Congress; and it is in this hope and belief that I now proceed to instruct you to make another, and, I trust, final, proposition to the American Secretary of State, for the solution of these long existing difficulties.

I avail myself of this opportunity the more readily, because, although Her Majesty's Government have strongly pressed a reference of the whole subject to arbitration, they are by no means insensible to the inconvenience attending such a mode of proceeding, and would willingly avoid it if possible. Nothing indeed, but the apprehension that an amicable settlement by means of direct negotiation was entirely hopeless, would have led them so decidedly to adopt this course; and they are still of opinion that, with such a prospect of failure before them, it would be their duty to adhere as earnestly as ever to this recommendation. Nor can they believe that any Christian Government could ultimately persevere in rejecting a proposal of this nature, whatever might be their objections to its adoption, and in the face of the civilized world deliberately recur to the dreadful alternative of War.

The Boundary having been fixed by the Convention of 1818 between the possessions of Great Britain and the United States, and the line of demarcation having been carried along the 49th parallel of Latitude for a distance of eight hundred or a thousand miles through an unfrequented and unknown Country, from the Lake of the Woods to the Rocky Mountains, it appeared to the Government of the United States that it was a natural and reasonable suggestion that this line should be continued along the same parallel, for about half that distance, and through a Country as little known or frequented, from the Rocky Mountains to the Sea. And indeed, with reference to such a Country, the extension of any line of Boundary already fixed might equally have been suggested, whether it had been carried along the 49th or any other parallel of Latitude.

On the other hand, however, it may justly be observed that any division of Territory in which both parties possess equal Rights, ought to proceed on a principle of mutual convenience, rather than on the adherence to an imaginary geographical line; and in this respect it must be confessed that the Boundary thus proposed would be manifestly defective. It would exclude us from every commodious and accessible Harbour on the Coast; it would deprive us of our long established means of water communication with the Interior for the prosecution of our Trade; and it would interfere with the possessions of British Colonists resident in a district in which it is believed that scarcely an American Citizen, as a Settler, has ever set his foot.

If, therefore, the 49th parallel of Latitude be adopted as the basis of an agreement, it will be incumbent upon us to obviate these objections, which, I trust in great measure, may be successfully accomplished.

You will accordingly propose to the American Secretary of State that the line of demarcation should be continued along the 49th parallel from the Rocky Mountains to the Sea Coast; and from thence in a Southerly direction through the centre of King George's Sound [1] and the Straits of Juan de Fuca, to the Pacifick Ocean; leaving the whole of Vancouver's Island, with its Ports and Harbours, in the possession of Great Britain.

You will also stipulate that from the point at which the 49th parallel of Latitude shall intersect the principal Northern Branch of the Columbia River, called

[1] A misnomer for the Gulf of Georgia, now Georgia Strait (see Senate Executive Document No. 29, 40th Congress, 2d session, serial 1316, p. 64; this same document, with the addition of a title page, table of contents, index, and list of errata, was printed under the title, "The Northwest Boundary. Discussion of the Water Boundary Question: Geographical Memoir of the Islands in Dispute: and History of the Military Occupation of San Juan Island: Accompanied by Map and Cross-sections of Channels . . .").

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Macgillivray's River in the Maps, the Navigation shall be free and open to the Hudson's Bay Company and to the Subjects of Great Britain trading with the said Company, until its junction with the Columbia; and from thence to the mouth of said River, with free access into and through the same, British Subjects with their Goods, Merchandize, and produce, to be dealt with as Citizens of the United States; it being always understood, however, that nothing shall interfere to prevent the American Government from making any Regulations respecting the Navigation of the River not inconsistent with the terms of the proposed Convention.

In the future appropriation of land, the possessory Rights of all British Settlers will of course be respected. The Hudson's Bay Company should be confirmed in the occupation of Fort Vancouver, and the adjacent Lands of which the Company have been in possession for many years. They would also retain such other Stations as were necessary for the convenient transit of their Commerce along the line of the Columbia; but all other Stations or trading Posts, connected with their present exclusive rights of hunting, and of traffick with the Natives, within the territory South of the 49th Degree of Latitude, would in all probability forthwith be abandoned.

The Puget Sound Agricultural Company have expended considerable Sums of money in the cultivation and improvement of land on the North of the Columbia River. They occupy two extensive Farms, on which they possess large stocks of Cattle and Sheep. These parties would also be entitled to be confirmed in the quiet enjoyment of their land; but if the situation of the Farms should be of publick and political importance, and it should be desired by the Government of the United States, the whole property might be transferred to them at a fair valuation.

I think that these proposals for an adjustment of the whole question at issue would be honourable and advantageous to both parties. It can scarcely be expected that either of them should now acquiesce in conditions less favourable than had been previously offered; and it may reasonably be presumed that each will at the present moment be prepared to make larger concessions than heretofore for the sake of peace. By this settlement, in addition to the terms proposed to us by Mr Gallatin in 1826, we should obtain the harbours necessary for our Commerce; as well as an increased security for our Settlers and their possessions; and, in lieu of the detached District, with its single Harbour, offered by the British Plenipotentiaries on that occasion, the United States would acquire the whole Coast with its various Harbours, and all the Territory North of the Columbia, as far as the 49th Degree of Latitude.

I am not disposed to weigh very minutely the precise amount of compensation or equivalent which may be received by either party in the course of this negotiation, but am content to leave such estimate to be made by a reference to higher considerations than the mere balance of territorial loss or gain. We have sought peace in the spirit of peace; and we have acted in the persuasion that it would be cheaply purchased by both Countries at the expense of any sacrifice which should not tarnish the honour, or affect the essential interests of either.

I have now therefore only to instruct you to inform the American Secretary of State that you have been authorized, and are prepared, to conclude a Convention without delay, founded on the conditions set forth in this Despatch.

[Instruction No. 19]

With reference to my Despatch No 18, of this date, I transmit to you herewith the Draft, or project, of a Treaty, such at least in its essential parts as Her Majesty's Government are prepared to conclude with the United States for the final settlement of the Oregon Question.

That project may be understood to embody all the conditions which are considered by us as indispensable. The wording of the Articles may be altered as may be deemed expedient; but their substance must be preserved; nor can any essential departure from that substance be admitted on the part of Great Britain.

The preamble may be considered as open to any alteration which may be proposed and which you may think expedient. In the project which I have sent you

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the definition of the Territory adopted in the Convention of 1827 has been adhered to. That definition appears to be the most suitable, and open to the least objection.

If the United States' Government should agree to our terms such or nearly such as they are now proposed, you will dc well to hasten as much as possible the conclusion of the Treaty, since the present constitution of the Senate appears to offer a greater chance of the acquiescence of that important Body in those Conditions than might be presented at any future period.

If, on the other hand, the President should decline to accept those Terms, and should make any counter proposition essentially at variance with their substance, you will express regret that you possess no power to admit any such Modification, and without absolutely rejecting whatever proposal may be submitted on the part of the United States, you will refer the whole matter to your Government.

In addition to the foregoing instructions of May 18, 1846, and under the same date, Aberdeen wrote a letter to Pakenham on the subject of the British proposal; the text of that communication, except for one immaterial postscript, follows; in respect of the form of the treaty, though not of the substance, Pakenham was vested with considerable discretion; and there is one highly interesting paragraph regarding the navigation clause of Article 2 (Selections from the Correspondence of George, Earl of Aberdeen, 1845–48, 218–21; a copy of this volume is in the Library of Congress):

Protracted as the debate in the Senate has been, it has at last had a good termination; and the difference of opinion which followed with the House of Representatives, has rather had a beneficial effect than otherwise, in consequence of the firmness of the Senate, and the conciliatory character of the resolutions as finally adopted.

I have already informed you that I only waited for the vote of the Senate in order to renew our propositions for the settlement of the Oregon question; and accordingly, by the present packet, I send you full instructions, as well as the principal articles of a Convention to be laid before the President for his acceptance, and to which we propose to adhere.

I am indifferent about the form of the preamble. That which I send appears to be suitable and proper; but, if the American Government desire anything different, you are perfectly at liberty to modify it in any manner you may think right and may find to be expedient.

The language of the three articles may also be varied in any manner which may be more acceptable, provided the substance be retained. It is very possible that the expressions may be improved, but the conditions themselves will not admit of any alteration.

Without calling this Convention an *ultimatum*, it will, in fact, be so as far as you are concerned; although you will, of course, send home for consideration any proposition which may be made at variance with these conditions. You will make no difficulty, however, in admitting at once other articles which may be proposed, and which are not in opposition to those now sent to you, if they should appear to you to be unobjectionable. We do not profess to send you a complete Convention, but only such articles as, in substance, we consider to be indispensable.

There is only one alteration of importance which you may admit without reference, and which, to prevent misapprehension, I will now mention to you. In the article which relates to the Columbia river, it is stipulated that the navigation shall be free and open to the Hudson's Bay Company, and to all subjects of Great Britain trading with the said Company. As the Hudson's Bay Company are really the only persons interested in the matter, it has been thought best to name them, as in some degree accounting for the concession of the navigation in consequence of their rights of possession and acquired interests in the territory; but if, for any reasons which I cannot anticipate, the American Government should prefer to grant the navigation generally to British subjects, without naming the

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Hudson's Bay Company, you will make no objection. The greater term will include the less.

It is our desire and hope that you may be able to conclude this Convention without delay. I think the American Government must be prepared for the conditions we have proposed, by the despatches of Mr. McLane on different occasions, as I have had much discussion with him, and have no doubt that he will do his best to ensure the acceptance of our terms. It seems generally to be apprehended with good reason that, if Congress should rise without our having previously come to any agreement, there is very little hope of any amicable settlement hereafter. Time, therefore, is even of more importance with you than with us; and we have accordingly been careful to make our proposal as moderate as possible, in order to facilitate its prompt acceptance. Nevertheless, I think it probable that, in consequence of his former declarations, the President will not venture to incur the responsibility of accepting the Convention; but that the best we can hope is his referring the whole matter to the Senate. In this case, with the temper which appears to exist in that body, I should be sanguine in the belief that the requisite majority of two-thirds may be found.

It is just possible, notwithstanding Mr. McLane's assurances of the pacific disposition of the President, that he may take upon himself to reject our proposals, and not to make any reference to the Senate. Where so much is done under the influence of popular excitement, and with a view to produce some effect in domestic policy, we can never be quite certain of the principle upon which the President may ultimately act. Should he follow this course, it will be for you to consider how far it may be prudent and useful to present a copy of my despatch to Mr. Buchanan, with a view to its production on a motion being made for that purpose in the Senate. This, however, I should be inclined to think would only be desirable in the event of the negociation being suspended altogether. But you will know best what ought to be done, according to the temper of the Senate and of the public.

There is another consideration which ought not to be entirely laid aside, although much delicacy will be required in adverting to it. You must be aware, from your own correspondence, from the public press, and from the apparent state of parties, that the existence of the present Government in this country is very precarious. I have not thought it necessary to conceal this state of things from Mr. McLane, who, of course, will report it to his Government. It will not be at all necessary for you to touch upon the subject; on the contrary, you should be perfectly silent on this head; but if Mr. Buchanan or the President should endeavour to discover your opinion, you will at once admit the fact, and leave them to make what use they may think proper of the information so confirmed.

Should we remain in office, I will not venture to say what might be the chance of any material alteration of our propositions being accepted. It would be extremely difficult for us to acquiesce in any such, should it be attempted; but I think it would be quite impossible for my successor, even if he were so inclined, to make any greater concessions than those which I have proposed. A reference to England, therefore, which, if made to me, would be of very doubtful success, would, if received by another, be nearly equivalent to a rupture of the negociation. This is a consideration which, in addition to the early termination of the Session of Congress, ought to make the American Government, if really desirous of an amicable settlement, endeavour to conclude the matter with you, upon the basis of the proposals now sent, rather than incur the risk of a fresh reference to this country. I repeat, however, that I would not have you touch at all upon this subject, unless you should be spoken to, with the view of obtaining from you a confirmation of that which I have no doubt Mr. McLane will report.

I should be glad if you would write to me privately, and let me know if any communication of this kind has taken place between you and the American Government, and whether you think that these considerations may have exercised any influence upon their final decision.

. . . . . .

P.S.—It has occurred, as being barely possible, that some state of things may have arisen in the United States, which, in your judgment, would render it desirable for you to withhold our proposals from being made to the Government. I cannot conceive this; but still, if you should be conscientiously convinced that, if

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I possessed a knowledge of the same facts, it would not be my desire that the proposals should be made, I beg that you will exercise your own discretion, and suspend them accordingly.

I repeat, that I think it in the highest degree improbable that such should be the case; at the same time, as you may feel reluctant not to comply with precise instructions, I wish to give you full liberty on the subject.

Regarding the influence of the then prospective change of administration in Great Britain upon the decision of the Government of the United States, three further letters are quoted (*ibid.*, 297, 299–301):

[*Mr. Pakenham to Lord Aberdeen, June 7, 1846*]

It is right that Your Lordship should know that, in the course of our conversation yesterday, Mr. Buchanan observed, of course without any allusion on my part to such a topic, that he should deeply regret the failure of our present efforts to effect a settlement of the Oregon question, because he had heard, he said, from Mr. McLane that, in the actual state of politics in England, the existence of the present administration must be considered as precarious; and he was convinced, he went on to say, that it would not be easy that another Government should be formed more disposed to act with fairness, moderation, and liberality towards the United States.

For every reason, he said that he should lament the retirement of the Queen's confidential advisers,—but more especially with reference to the question of Oregon,—should any delay or difficulty occur in the negociation now on foot. This makes me believe that the President and his Ministers will be anxious not to lose the favourable opportunity now offered to them, of setting at rest for ever a question which has been so long a sore and an annoyance to both Governments.

I must add, that the opinion expressed by Mr. Buchanan on the point above referred to is that which appears to prevail among men of all parties in the United States, and to be that most generally inculcated by the public press.

[*Mr. Pakenham to Lord Aberdeen, June 13, 1846*]

[Extract]

The Oregon question is settled at last, and I for one am heartily glad of it.

The positive impatience shown by Mr. Buchanan, to sign and conclude, convinces me that the fear lest any complication should arise out of the Mexican war has done a great deal in inducing the American Government to accept Your Lordship's proposal without alteration. The bare suggestion of a reference to England was sufficient to overcome every difficulty that was talked of. If it had not been for this circumstance, I am far from being satisfied that the matter would have been so promptly and easily settled.

[*Lord Aberdeen to Mr. Pakenham, June 30, 1846*]

[Extract]

I entertain no doubt that it was not the apprehension of any embarrassment in consequence of the Mexican War which led to this decision; but that it was entirely owing to the impending change of the administration in this country, and a desire to settle the whole affair with us before our departure. Mr. McLane told me he had informed his Government, we should not be in office on the 1st July, and that, if they desired to bring the negociation with us to a successful conclusion, no time was to be lost. The conduct of my predecessor and expected successor [Viscount Palmerston], with regard to the Ashburton Treaty, had filled Mr. McLane with

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the greatest alarm, which, I presume, was shared by the Government of the United States. Be the cause of their decision what it may, it is a most fortunate and happy event.

Whether the Oregon question would have had a different ending if a Whig administration had come into power at London before the settlement was reached, can be no more than a matter for speculation; on the subject of "British Party Politics and the Oregon Treaty" there is a highly interesting and instructive article by Professor Frederick Merk (American Historical Review, XXXVII, 653–77); the reasons for the failure of Lord John Russell to form a government in December 1845 are there given; the hostile attitude of both Lord John Russell and Viscount Palmerston to an Oregon settlement are described, with mention of Russell's speech in April 1845, following Polk's inaugural address; the views of Palmerston continued unaltered, as shown by his letter of February 2, 1846, to Russell, which is there quoted; but the attitude of Russell had earlier changed, as is indicated by his speech of January 12, 1846, at Glasgow, an excerpt from which is given, by his comment on Pakenham in the Commons on January 23, and by this very significant passage in his letter to Palmerston of February 3 (quoted *ibid.*, 658): "My opinion upon the whole is that we may well and with due regard to our own interests give up the Columbia river, and I have let Aberdeen know privately that he will have no opposition from me on that ground." See also, by the same author, "British Government Propaganda and the Oregon Treaty", in American Historical Review, XL, 38–62.

Possible Modifications

As the British proposal was accepted, its terms were written as the terms of the treaty; but that proposal had not been presented as an ultimatum; and McLane reported in his despatch of July 3, 1846, that some modifications might have been obtained; that despatch also throws light on the discussions at London of the right of navigation of the Columbia River (D.S., 56 Despatches, Great Britain, No. 58):

I received on the twenty ninth of June your despatch number thirty four, dated the thirteenth of the same month; acquainting me with the proceedings and resolution of the Senate in regard to the British proposition for the partition of the territory of Oregon.

I communicated the substance of your Despatch to Lord Aberdeen, in the course of the morning of the same day; and I may now assert with even greater confidence (if not with absolute certainty) than I did in my despatch of the eighteenth of May, that if the President and Senate had proposed, as a modification of the British proposition, to limit the right of navigating the Columbia river to a term of years it would have been conceded before Ministers announced [on June 29; Hansard, LXXXVII, 1039–41] their resignation to the two houses of Parliament. I think it is equally certain that the proposed variations of the articles of the Convention from the statement in my Despatch of the eighteenth of May, referred to in your Despatch[1] of the sixth of June, might also have been reconciled without difficulty; and, indeed, Lord Aberdeen thought one of them, that relating to the omission to secure the possessions of our citizens North of the forty ninth parallel, would be rectified by Mr Pakenham himself, without reference to his government.

[1] As to this "Despatch", see below.

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It is quite obvious, however, that in my previous conversations with Lord Aberdeen, I had overrated the difficulty which a demand to the permanent navigation of the Columbia river would interpose; and that Mr Pakenham was better informed of the opinions and practicabilities at Washington than I was. Lord Aberdeen is of course better satisfied that he relied less upon my assurances than upon those received from other quarters; though, for myself, I rather think the settlement is one with which both nations may be satisfied. And I will moreover confess that, but for the nature of your several communications, I should have regarded, and did regard, the stipulation as it stands much more desirable even for us, than a concession of the free navigation of the river for a long term of years to British subjects and British commerce generally.

Lord Aberdeen was not disposed, however, to assent to the meaning the Senate desire to affix to the article as it stands relative to the navigation of the Columbia river; though he said it would remain a question of construction to be considered and decided when the occasion for it might arise. I still believe the question is not regarded here, as one of great importance. I deem it my duty, at the same time, to state that in the course of the discussions here in relation to that article of the convention the duration of the Charter of the Hudson's bay company was not particularly adverted to.

The right freely to navigate the river was first demanded indefinitely and for British subjects and British commerce generally, as it had been offered in eighteen hundred and twenty six-seven. It was mainly urged on the ground that having been offered before it would be derogatory on the part of Great Britain to yield it now, and that it was necessary as affording only proper protection to those rights which had grown up during the joint-occupancy. I endeavoured to effect a compromise of the point by conceding the navigation for such period only as it would be absolutely needed for the proper enjoyment of those rights which had so grown up: and I had reason to believe at one time that it had been determined to make the proposition with that limitation. Subsequently, however, it became apparent that a change for some reason had taken place, and I did not doubt that information from Washington had been received here which made it difficult if not impossible that the British Ministry should in the first instance *offer* to accept the navigation of the river for a limited period. In this posture of the affair, I suggested and earnestly pressed, without, however, committing myself to its' acceptance or approval, that the right of navigating the river should be confined to the *purposes* and trade of the *Hudson's Bay Company*, for which it had been said it was chiefly intended, and this suggestion, after some discussion and after a reconsideration of the subject by the Cabinet, was adopted. My object in urging this restriction was twofold; first by restricting the privilege to a particular Company, and denying it to British subjects and British Commerce generally, I supposed if we insisted upon confining it to a term of years, it would be more difficult for this government to risk a rupture in favor of a right so confined to a particular trade and a particular class of subjects; and, secondly, that as the operations of the Hudson's Bay Company would be of temporary duration the privilege would in point of fact be of no long continuance

In the foregoing despatch McLane refers to "the proposed variations of the articles . . . referred to in your [Buchanan's] Despatch of the sixth of June", which he thinks "it is equally certain . . . might also have been reconciled without difficulty"; to understand this, one must have in mind that the "Despatch" of June 6, 1846, is *not* the instruction No. 33 of that date (cited above), which officially informed McLane of the decision reached that day to submit the British proposal to the Senate, but is Buchanan's private letter of June 6, 1846, wherein Buchanan wrote as follows (Moore, Works of James Buchanan, VII, 3–4):

I have but little time to scribble you a private letter before the closing of the Mail to go by the Great Britain.

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The President has determined to submit Lord Aberdeen's projet to the Senate. He has no alternative as you know between this & its absolute rejection.

The proviso to the first article would seem to render it questionable whether both parties would have the right to navigate the Strait of Fuca, as an arm of the Sea, north of the parallel of 49°; neither does it provide that the line shall pass through the Canal de Arro, as stated in your Despatch. This would probably be the fair construction.

The articles relating to the possessions of British occupants South of 49° is vague & indefinite; & in order to prevent disputes between the two Governments hereafter as to the extent of these possessions, it would seem to be a prudent precaution to provide some means of ascertaining the rights of these occupants respectively. There is no reciprocal provision in the treaty for American settlers North of 49°. There may be none there; but yet such a provision would give the Convention a fairer appearance.

The right of the Hudson's Bay Company to the navigation of the Columbia presents the important difficulty. It is considered doubtful by the President and several members of the Cabinet whether under the terms of the projet this right would not expire upon the termination of the existing charter of that Company in 1859.

The President's message will re-iterate the opinions expressed in his annual message in favor of our title to 54°40; but in consideration of & in deference to the contrary opinions expressed by the Senate, his Constitutional advisers, he submits the projet to them for their previous advice. He may probably suggest some modifications.

What the Senate may do in the premises is uncertain. There undoubtedly is in that Body a Constitutional majority in favor of settling the question on the parallel of 49 to the Straits of Fuca. The question of the perpetual navigation of the Columbia is & ought to be the point of difficulty. Should the Senate modify this article so as to limit the right to the termination of the existing charter of the Hudson's Bay Company, I can scarcely suppose that this modification would be rejected by the British Government.

Thus, according to McLane, there were four modifications of the treaty which might have been obtained; three of them were the "proposed variations" of the Buchanan letter just quoted, namely: (*a*) a more specific description of the water boundary, so as to mention Haro Strait; (*b*) a statement of the right to navigate the Strait of Fuca (i.e., the waters connecting therewith) north of 49°; and (*c*) a reciprocal provision for American settlers north of the boundary.

The first of those three "variations", if made, would have been of real importance; for, while the line would be just as it now is, there would have been no controversy for a quarter of a century over the San Juan water boundary and no reference of the question to arbitration (see Washington Papers, V, *passim*); during that arbitration mention was made of Buchanan's letter of June 6, 1846, but its text was not in evidence (*ibid.*, 205; a copy of the letter was before Secretary of State Cass when he wrote to George M. Dallas, Minister at London, on October 20, 1859, that therein Buchanan "expressly mentions the Canal de Haro as the channel intended by the treaty"; see D.S., 17 Instructions, Great Britain, 229, 243; Senate Executive Document No. 29, 40th Congress, 2d session, serial 1316, pp. 231, 236).

McLane also says, almost "with absolute certainty", that if the President and Senate had proposed a limitation of a term of years of the right of navigation of the Columbia (Article 2), it would have been conceded at once; his mention of the "meaning" attributed by the Senate to Article 2 refers to the following paragraphs in the instruc-

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tion of June 13, 1846, written after the first resolution of advice of the Senate of June 12 but before the final resolution of advice and consent of June 18 (D.S., 15 Instructions, Great Britain, 312–13):

I have learned from the best sources that the Senate gave this advice under the conviction that, by the true construction of the second article of the projet, the right of the Hudson's Bay Company to navigate the Columbia would expire with the termination of their present license to trade with the Indians, &c., on the Northwest Coast of America, on the 30th May, 1859. In conversation with Mr. Pakenham to-day, I communicated this fact to him, and requested him to state it in his despatch to Lord Aberdeen.

The treaty will be signed and sent to the Senate on Monday next [June 15]: and it is more than probable that they will, in some form or other, place upon their records their understanding of its true construction in this particular.

It had been proposed in the Senate during the proceedings of June 11 and 12 to add a proviso to Article 2 of the draft treaty to the effect that the right of navigation thereby secured should be expressly limited in time so as to expire either by 1859 or (as the motion was finally drafted) by 1863; but an amendment in that sense to the Senate resolution of advice had been negatived by 10 yeas to 31 nays (see Executive Journal, VII, 88, 89); according to the view expressed by Buchanan, this was for the reason that such a proviso was deemed unnecessary.

Pakenham, in a conversation with Buchanan on June 13, 1846, explicitly refused to assent to the suggested interpretation (Washington Papers, V, 234–35, despatch No. 77, of June 13, 1846; the two final paragraphs there printed do not appear in Pakenham Papers, F.O. 5:449, which contain only an "extract" from that despatch; but the entire despatch is in Selections from the Correspondence of George, Earl of Aberdeen, 1845–48, 298–99); Aberdeen had been equally clear in his conference with McLane on June 29, as reported by the latter in his despatch of July 3 (quoted above); and added to this is the instruction of June 29 to Pakenham, which follows (from Pakenham Papers, F.O. 115:91, No. 30; also in Washington Papers, V, 235–36):

Her Majesty's Government have received this day with the greatest satisfaction your Despatch N° 77 of the 13th instant, in which you announce the acceptance by the Senate of the Draft of Treaty for the settlement of the Oregon Question which was conveyed to you in my Despatch N° 19 of the 18th of May, and also the intention of the President to proceed forthwith to the completion of the proposed Convention.

In your Despatch you state that Mr Buchanan had observed to you that the privilege of navigating the Columbia River which, by the second Article of the Convention is secured to the Hudson's Bay Company and to British Subjects trading with the same, was understood by the Senate to be limited to the duration of the License under which the Company now carry on their operations in the Country West of the Rocky Mountains; to which observation you very properly replied that the Article proposed by Her Majesty's Government spoke for itself.

Nothing in fact can well be clearer than the language of that Article. In drawing it up, I had not the smallest intention of restricting the British right to navigate the Columbia in the manner supposed, nor can I comprehend how such a supposition could have been entertained by the Senate, for I have reason to know that Mr McLane fully and faithfully reported to his Government all that passed between himself and me respecting the navigation of the Columbia. In every

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conversation that we held on the subject of the proposed Treaty, I not only declared to Mr McLane that we must insist on the permanent right being secured to us to navigate the Columbia, but I even shewed him the project of the Treaty and on his expressing an apprehension that the provision contained in the second Article would not be accepted, unless the right of navigation were limited to a term of years, I positively declined to accede to this suggestion.

I think it right to state these facts, in order to obviate any misapprehensions which might possibly hereafter be raised on the construction of the 2d Article of the Oregon Treaty.

. . . . . .

July 1st 1846

P.S. Since writing this Despatch, I have held a conversation with Mr McLane, in which he has freely and fully confirmed all that I have stated above with reference to his own understanding of the intent of the 2d Article of the Oregon Treaty.

Thus Aberdeen insisted that his proposal did not and was not intended to include any limitation of time in Article 2 and that his understanding in that respect was well known to McLane. It is not in the least inconsistent with such insistence that Aberdeen would, according to McLane, have conceded such a time limitation if it had been put forward by the President and Senate in response to the British proposal.

The Joint Resolution of April 27, 1846

Article 2 of the convention of August 6, 1827 (Document 56), reads as follows:

> It shall be competent, however, to either of the Contracting Parties, in case either should think fit, at any time after the Twentieth of October 1828, on giving due notice of Twelve Months to the other Contracting Party, to annul and abrogate this Convention: and it shall, in such case, be accordingly entirely annulled and abrogated, after the expiration of the said term of notice.

Abrogation of that convention of August 6, 1827, became a necessary part of the Oregon policy of Polk after the negotiations for a settlement of the Oregon question had been interrupted by the withdrawal (on August 30, 1845) of the American proposal; congressional authority for the giving of the requisite notice was deemed necessary by Polk and his advisers (but there was dissent at the time; see the minority report of the House Committee on Foreign Affairs in Congressional Globe, XV, 138–39, January 5, 1846; for other subsequent views on the point, see Crandall, Treaties, Their Making and Enforcement, 2d ed., 458–62); and such authorization was requested in the annual presidential message of December 2, 1845 (quoted in part above).

The ensuing debates in Congress were naturally not limited in scope to the 1827 convention and its abrogation; they extended to the Oregon question and to the Oregon policy of the United States in their widest sense; the congressional proceedings were of great, perhaps controlling, influence in the settlement reached; they were public and reports of them were sent to London by every mail; they were prolonged, as the proposed resolution pended in the Senate for more than

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two months and the date of final enactment was nearly five months later than the presidential request; the attitude of the National Legislature counted, of necessity, both with the British Foreign Office and with the American Executive; and from an early stage there was no doubt that a large majority in the Senate favored agreement on the Oregon question on the basis of the line of 49°; moreover, the attitude of the British Government was sufficiently well known to the Senate to be there a factor of importance; that attitude had not been as fully disclosed as would have been the case had McLane's despatches been communicated; but press reports from England, the discussions in Parliament, and doubtless also senatorial conversations in Washington with Buchanan and Pakenham had given the substance of the Oregon policy of Great Britain at the time.

Pakenham was in touch with various Senators. He reported to Aberdeen on December 29, 1845, that Senator William S. Archer, of Virginia, with William Wilson Corcoran, prominent banker of Washington, had urged him to propose the 49th parallel as a boundary, together with provision that the whole of Vancouver Island should go to Great Britain and that the right of free navigation of the Columbia should be conceded, at least for a term of years; and he stated that they had assured him such an offer would be sent to the Senate, where it would be approved (Pakenham Papers, F.O. 5 : 430, despatch No. 138, and confidential despatch, unnumbered). By the same time he had learned from Senator Benton, of Missouri, that the latter would favor such a settlement (*ibid.*). On February 26, 1846, he reported that the disposition of the Senate "is becoming every day more pacifick" and that Calhoun and Webster had both told him only a few members of the Senate would vote against "an accommodation . . . on the principle of equitable partition and compromise" (*ibid.*, F.O. 5 : 446, despatch No. 19, and confidential despatch, unnumbered). He was consulted by certain Senators, unnamed, regarding a suggested resolution expressing the sense of the Senate in favor of the resumption of negotiations on the basis proposed by Gallatin in 1826; he advised Aberdeen that "until something in this way shall have taken place . . . no further proposition should be made on the part of England" (*ibid.*); and he pointed out that even the most moderate members of the Senate would insist on the 49th parallel as the basis of any arrangement, so that "the advocates of a peaceful settlement of the question are now universally designated as 49. Men, in contradistinction to those who go for the whole of Oregon even at the risk of War, and are called 54.40 men" (*ibid.*, F.O. 5 : 447, despatch No. 34, March 29, 1846).

Certainly Polk was disappointed both with the delay in Congress (Polk's Diary, I, 338, 348, April 18 and 23, 1846) and with the form of the resolution as finally passed (*ibid.*, 341, April 20, 1846):

> I would have preferred a naked notice; that next to that I preferred the House Resolutions; but it being now ascertained by repeated votes in the Senate that neither could be had, I decidedly preferred the Senate form of notice to no notice at all.

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At the same time Aberdeen was waiting for the passage of the resolution by the Senate as an opening for the making of the British proposal (see McLane's despatches of April 17 and May 3, 1846, both cited above and the latter quoted in part) and was naturally pleased with the conciliatory wording of the preamble of the resolution in its final form (in his instruction No. 18 to Pakenham, of May 18, 1846, quoted above, see the paragraph beginning, "In complying with the recommendation").

The Oregon debates of 1846, during the first session of the Twenty-ninth Congress, are in Congressional Globe, XV, and appendix, *passim;* one speech of Senator Lewis Cass, of Michigan, is in *ibid.*, XVI, appendix, 26–31. The joint resolution for "notice" originated in the House of Representatives and as there passed on February 9, 1846, was as follows (*ibid.*, XV, 350):

JOINT RESOLUTION of notice to Great Britain to "annull and abrogate" the convention between Great Britain and the United States, of the sixth of August, eighteen hundred and twenty-seven, relative to the country "on the northwest coast of America, westward of the Stony mountains," commonly called Oregon.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States cause notice to be given to the Government of Great Britain, that the convention between the United States of America and Great Britain, concerning the territory on the northwest coast of America west of the Stony or Rocky mountains, of the sixth day of August eighteen hundred and twenty-seven, signed at London, shall be annulled and abrogated twelve months after giving said notice.

Resolved, That nothing herein contained is intended to interfere with the right and discretion of the proper authorities of the two contracting parties to renew or pursue negotiations for an amicable settlement of the controversy respecting the Oregon territory.

In the Senate, where the vote on third reading was 40 yeas to 14 nays (*ibid.*, 683, April 16, 1846), the form of the resolution was greatly changed; its introductory passages were framed in friendly language, and its clause for the notice was authorizing and not mandatory (for the Senate form, see *ibid.*, 691); following amendments by the House to the Senate form (*ibid.*, 691–92), which the Senate refused (*ibid.*, 693), and a conference, the resolution was finally passed, in very nearly the Senate form, on April 23 (*ibid.*, 716–17, 720–21), and became law on April 27, 1846. It reads as follows (9 Statutes at Large, 109–10; collated here with the original):

Joint Resolution concerning the Oregon Territory.

Whereas, by the convention concluded the twentieth day of October, eighteen hundred and eighteen, between the United States of America and the King of the United Kingdom of Great Britain and Ireland, for the period of ten years, and afterwards indefinitely extended and continued in force by another convention of the same parties, concluded the sixth day of August in the year of our Lord one thousand eight hundred and twenty-seven, it was agreed that any country that may be claimed by either party on the northwest coast of America westward of the Stony or Rocky Mountains, now commonly called the Oregon territory, should, together with its harbors, bays, and creeks, and the navigation of all rivers within the same, be "free and open" to the vessels, citizens, and subjects

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of the two powers, but without prejudice to any claim which either of the parties might have to any part of said country; and with this further provision, in the second article of the said convention of the sixth of August, eighteen hundred and twenty-seven, that either party might abrogate and annul said convention on giving due notice of twelve months to the other contracting party—

And Whereas it has now become desirable that the respective claims of the United States and Great Britain should be definitely settled, and that said territory may no longer than need be remain subject to the evil consequences of the divided allegiance of its American and British population, and of the confusion and conflict of national jurisdictions, dangerous to the cherished peace and good understanding of the two countries:

With a view therefore that steps be taken for the abrogation of the said convention of the sixth of August, eighteen hundred and twenty-seven, in the mode prescribed in its second article, and that the attention of the governments of both countries may be the more earnestly directed to the adoption of all proper measures for a speedy and amicable adjustment of the differences and disputes in regard to the said territory:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby authorized, at his discretion, to give to the government of Great Britain the notice required by the second article of the said convention of the sixth of August, eighteen hundred and twenty-seven, for the abrogation of the same.

JOHN W DAVIS
Speaker of the House of Representatives,
G. M. DALLAS.
President of the Senate.

Approved April 27th 1846:
JAMES K. POLK

Webster thus spoke his view of the part played by the Senate (The Writings and Speeches of Daniel Webster, IV, 20–21, December 2, 1846):

Now, Gentlemen, the remarkable characteristic of the settlement of this Oregon question by treaty is this. In the general operation of government, treaties are negotiated by the President and ratified by the Senate; but here is the reverse,—here is a treaty negotiated by the Senate, and only agreed to by the President. In August, 1845, all effort of the administration to settle the Oregon question by negotiation had come to an end; and I am not aware that, from that day to the absolute signature of the treaty, the administration, or its agents at home, or its agents abroad, did the least thing upon earth to advance the negotiation towards settlement in any shape one single step; and if it had stood where they left it, it would have remained unsettled at this moment. But it was settled. The discussions in Congress, the discussions on the other side of the water, the general sense of the community, all protested against the iniquity of two of the greatest nations of modern times rushing into war and shedding Christian blood in such a controversy. All enforced the conviction, that it was a question to be settled by an equitable and fair consideration, and it was thus settled.

No one, perhaps, was more intimately in touch with the progress of events at Washington in 1845–46 (outside of the interchanges between the President and his advisers) than was the British Plenipotentiary; and while naturally to be thought perhaps biased and not impartial, his portrayal of the effect of the Senate attitude on the administration policy (written after publication of the instructions of Buchanan) is worthy of quotation (despatch No. 106, August 13, 1846; not in Pakenham Papers; Washington Papers, V, 236–37):

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The injunction of secrecy having been removed by a resolution of the Senate, I have the honor herewith to transmit three numbers of the Union, official newspaper, containing, in an authentic form, (Union of 7th August,) the papers relative to the conclusion of the Oregon negotiation which I had the honor to transmit in an unauthorized form with my dispatch No. 100, and also (Unions of 8th and 10th August) two Messages from the President to the Senate, the first communicating for approval the Treaty signed here on the 15th of June, the second communicating documents not before communicated to the Senate relative to the Oregon Territory, in answer to a resolution of the Senate of the 17th June last.

Among the papers thus made public, the one which I should most particularly recommend to your Lordship's attention, is a dispatch from Mr. Buchanan to Mr. MacLane, dated the 12th of July, 1845, (Union of 8th August,) setting forth the terms on which the President was willing, at that time, to settle the Oregon question, but evidently with little or no expectation that those terms would be accepted by Great Britain, I might almost say with an expectation scarcely concealed that they would be rejected, when, to use Mr. Buchanan's own words, the President would "be relieved from the embarrassment in which he has been involved by the acts, offers, and declarations of his predecessors," and be justified in going to war for the whole territory.

The remarkable thing in this dispatch is the confidence which it betrays that, in the course which the President had made up his mind to follow with reference to the Oregon question, he would receive the countenance and support of the Senate and the country, even to the extremity of a war with England. The result has shown that, in this expectation, he did not do justice either to the wisdom and integrity of the Senate, or to the intelligence and good sense of the American people.

Within a few days after the opening of the late session of Congress it became evident that Mr. Polk's policy respecting Oregon was viewed with no favor by a large majority of the Senate, nor was the war cry raised by the more ardent partisans of the Administration responded to in any part of the country.

In process of time this conclusion forced itself on the mind of the President and his advisers, and hence your Lordship will find in the ulterior dispatches of Mr. Buchanan to Mr. MacLane a far more moderate and subdued tone, until at last they exhibit a positive and conciliatory desire to settle the question by compromise, the title of the United States to "the whole of Oregon" having apparently been forgotten.

If further proof were wanted of the anxiety of this Government to be extricated from the mistaken position in which they had placed themselves, it would be found in the alacrity in which the terms last proposed by Her Majesty's Government for the settlement of the controversy were accepted.

Sufficient time has now elapsed since the promulgation of the Treaty to enable us to judge of the light in which the transaction has been viewed throughout the country, and it is gratifying to say that it has been everywhere received with satisfaction and applause.

No evidence whatever of a contrary feeling has come within my observation, except it be among the disappointed advocates of a war policy, who had staked their political fortune upon the adoption of extreme measures, and even in these quarters, I am bound in truth to say that the irritation is rather against the President and his ministers for having, as they say, deceived and betrayed them, than from any express condemnation of the Treaty itself.

The Notice of Abrogation

In Polk's Diary (I, 353–54) is the following entry for Saturday, April 25, 1846:

The Cabinet held a regular meeting to-day; all the members present. I brought before the Cabinet the subject of the Joint Resolution of Congress authorizing me "in my discretion" to give to the Government of Great Brittain notice to abrogate the Convention of the 6th of August, 1827, concerning the Oregon Territory. I stated that I had determined to give the notice without delay, and that in my judgment it was proper to give it to the Brittish Government in England and not to the Brittish Plenopotentiary here. In this the Cabinet were agreed. Mr. Buchanan had suggested to me on yesterday that the notice should

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be given to the Earl of Aberdeen, Her Brittanic Majesty's Minister for Foreign affairs. To this I had objected upon the ground that as the Executive Chief Magistrate of the U.S. I could hold no communication with a subordinate minister of the Government of Great Brittain, but that any communication from the President must be addressed directly to the Sovereign of that country. In this the Cabinet were agreed, Mr. Buchanan having yielded his suggestion made to me on yesterday. It was agreed that Mr. Buchanan should prepare the form of notice, to be submitted to the Cabinet at their next meeting so as to be in time to be transmitted to Mr. McLane at London by the Steamer of the 1st proximo, to be by him delivered to the constituted authorities of the Government of Great Brittain.

Polk was quite right in saying that the President of the United States properly communicates formally only with the sovereign or chief of state of another country; but he was mistaken in supposing that the notice of abrogation was required to be signed by the President. The authorization of Congress naturally and as a matter of course named the President (and not any subordinate) as empowered to act; but it was no more necessary for the President to sign the notice himself than it was for him to proceed to London to deliver it; a note directed by the President to be written and delivered by McLane to Aberdeen would have served every purpose; such a course would have been in accord with later practice; but this was the first occasion in our history of the abrogation of a treaty of the United States by notice from this Government; so there was at the time no American precedent as a guide.

Pursuant to the views of the President, the instrument of notice was in solemn and elaborate form, under the Great Seal, signed by the President, countersigned by the Secretary of State, and addressed to Queen Victoria, as follows (D.S., 1 Communications to Foreign Sovereigns and States, 337–39; Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 47–48; the form prepared by Buchanan was longer; see Polk's Diary, I, 360, April 27, 1846):

To Her Majesty VICTORIA,
Queen of the United Kingdom of Great Britain and Ireland, &c., &c., &c.

Whereas the Congress of the United States have adopted a "Joint Resolution concerning the Oregon Territory, of which the following is a copy:

[Here follows the text of the joint resolution]

Now, therefore, after a careful consideration of the premises, I, James K. Polk, President of the United States, in the exercise of the authority and discretion vested in me by the said "Joint Resolution concerning the Oregon Territory", and in pursuance of the second article of the Convention of the sixth of August, eighteen hundred and twenty-seven, therein mentioned, do hereby, in behalf of the United States, give notice to Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, that at the end of twelve months from and after the delivery of these presents, by the Envoy Extraordinary and Minister Plenipotentiary of the United States at London, to Her Britannic Majesty, or to Her Majesty's Principal Secretary of State for Foreign Affairs, the said Convention shall be entirely annulled and abrogated.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed. Given under my hand at Washington, this (L.S.) twenty-eighth day of April, A.D. 1846, and of the Independence of the said States the seventieth.

JAMES K. POLK.

By the President:
JAMES BUCHANAN,
Secretary of State.

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The instruction to McLane transmitting the instrument of notice was of the same date, April 28, 1846; Polk had a hand in its drafting (*ibid.*, I, 360–61); its material paragraphs follow (D.S., 15 Instructions, Great Britain, 292–94; Senate Document No. 489, 29th Congress, 1st session, serial 478, p. 46):

I herewith transmit a notice for the abrogation of the Convention of the 6th August, 1827, between Great Britain and the United States, in accordance with the terms prescribed in its second article. This paper you will deliver to Her Britannic Majesty in person, or to Her Majesty's Principal Secretary of State for Foreign Affairs, after you shall have ascertained which of these modes of presenting it will be most in accordance with Her Majesty's wishes. A duplicate of the same is transmitted, to be placed on file in the archives of your Legation.

As the abrogation of this Convention is an act of an important and solemn character, the delivery of the notice ought to be attested with all due formality. The mode is left entirely to your own discretion; but I would suggest that it might be made the subject of a protocol in triplicate, one copy of which should remain with the British Government, another with the Legation in London, and the third be transmitted to this Department.

In the remarks which you may have occasion to make on the delivery of the notice, the language of the preamble to the "joint resolution concerning the Oregon Territory" must necessarily be your guide. It is true that the President would have preferred a naked resolution, authorizing him to give the notice; and he believes that if such a resolution had been adopted by Congress during the month of December last, the controversy might have been adjusted both more speedily and upon better terms for the United States. He was content, nevertheless, with the resolution as it originally passed the House of Representatives: and in the form finally adopted he considers it preferable to a failure of the measure. However, Congress have spoken their will upon the subject in their joint resolution, and to this it is his and your duty to conform.

Upon a careful review of my despatch to you (Nº 23,) of the 26th February last, the President finds nothing to change. It will still continue to be the guide of your conduct. In that despatch, I have distinctly declared that "the President has at all times been prepared to receive and to treat with the utmost respect any proposal for a compromise [of the Oregon question] which might emanate from the British Government. Whilst he has not deemed it proper to invite such a proposal, he has ever manifested an anxious desire to preserve amicable relations with Great Britain." These sentiments of the President you may communicate to Lord Aberdeen on delivering the notice.

In the present state of the negotiation, it is clear that, "in the adoption of all proper measures for a speedy and amicable adjustment of the differences and disputes in regard to said territory", the first proposal ought to proceed from the British Government. It is deemed unnecessary to enforce so plain a proposition by arguments as these will readily occur to your own mind, should this become a question, which, however, cannot be anticipated.

The foregoing instruction, with its enclosures, was received at London on May 15, 1846, "late in the day". McLane naturally found it impossible to follow the suggestion that the notice be delivered to Queen Victoria "in person" or to have the delivery "made the subject of a protocol in triplicate"; and before any action by McLane was feasible the British proposal for adjustment of the Oregon question had been formulated (May 18) and forwarded to Washington by the packet of May 19, so that the later paragraphs of the instruction became superfluous.

McLane's despatch of May 24 gives an account of his interview with Aberdeen on May 20 and of the procedure adopted; the text of that

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despatch and of its enclosures, the note of McLane to Aberdeen of May 20 (delivered May 21) and the reply of the latter of May 22, follow (D.S., 56 Despatches, Great Britain, No. 48, and enclosures; only the note of Aberdeen is printed in Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 49–50; that note is here collated with the original, enclosure to despatch No. 49, May 27, 1846):

I wrote on the eighteenth Instant, acknowledging the receipt of your Despatch, Number twenty seven, dated the twenty eighth of of April, in which you transmitted the notice from the President abrogating the convention of August eighteen hundred and twenty seven between Great Britain and the United States, and instructing me as to the mode of delivering it. At the same time I informed you that I intended on the day following, the nineteenth, to proceed in the execution of your instructions.

I did not obtain an interview with Lord Aberdeen, however, until the twentieth Instant. On that occasion I showed him the notice in the form in which it had been transmitted to me and acquainted him with such parts of your Despatch as would best explain the wishes of the President, and, as I thought, might without impropriety be communicated.

It will be observed, that as the notice was to be delivered to Her Majesty, or to the Principal Secretary of State for Foreign affairs, according to Her Majesty's wishes, neither that, nor the suggestion in your letter of making the delivery the subject of a protocol in triplicate could be determined without the concurrence of Her Majesty's government.

Of course, it would have been more agreeable to me, without any reference to regularity, to have conformed in all respects to the suggestions in your Despatch. Lord Aberdeen, however, was quite explicit not only in requiring that the notice should be delivered to the Principal Secretary of State for Foreign Affairs, but, in his objection to making the delivery the subject of a Protocol in triplicate

He said that, according to common usage, in cases of terminating a treaty by notice from one of the contracting parties to the other, the notification from the government dissolving the treaty was made through the regular Functionary of communication with Foreign Governments of the other contracting Party; he referred particularly to a recent case [1] of a proceeding by the Government of Brazil to terminate the Treaty with Great Britain by notice for that purpose, in which, although it became a question whether the casus fœderis had arisen, the same course, in deference to common precedent, was pursued; and he insisted upon the adoption of the same ceremony upon the present occasion. Otherwise he apprehended that, if called upon, he would find it difficult to give a satisfactory explanation of the departure from the accustomed form.

Being entirely satisfied that the mode of delivering the notice thus indicated would be in every respect valid and authentic, with or without consent, I confess that the preference given to it by this government appeared to me rather to recommend than discourage its' adoption.

It was finally understood under these circumstances, that I should communicate the notice in a note to the Principal Secretary of State for Foreign Affairs, referring to my having previously acquainted him with the transmission of the notice from my Government, and with the special instructions and suggestions accompanying it; that I should also refer to the objections he had made to the adoption of the mode I had suggested under your instructions, and to the pref-

[1] The "recent case" concerned the slave trade convention between Brazil and Great Britain of July 28, 1817, with an additional article thereto of September 11, 1817 (British and Foreign State Papers, IV, 85–116); another relevant convention is that of November 23, 1826 (*ibid.*, XIV, 609–12), especially the first article thereof; for the correspondence of 1845, see *ibid.*, XXXIV, 688–90, 692–98, 502–3, 527, 537.

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erence he had ultimately given to the established form in similar cases, and that, conforming to that custom and his preference of it, I should ask an acknowledgement of the receipt of my note and of the notice for the purpose for which it had been given.

Accordingly, on the same day of the interview I prepared my communication enclosing the Notice as transmitted to me, and the following day delivered both at the Foreign Office: on the twenty second I received from the Earl of Aberdeen his reply of the same date in which he acknowledges on the part of Her Majesty's Government the receipt of the said notice, and declares that, in conformity with its' tenor, Her Majesty's Government will consider the Convention of the sixth of August eighteen hundred and twenty seven abrogated accordingly from the twenty first of May eighteen hundred and forty seven.

I hereto annex copies of the whole; and by the first safe private opportunity will transmit the original of the Earl of Aberdeen's reply, to be filed in the archives of the Department. The notice, in duplicate, transmitted from the department, is filed in the archives of this Legation, and a full record of the correspondence with the Earl of Aberdeen carefully made.

It would seem to me that the nature of Lord Aberdeen's answer, if nothing else, would render the mode of delivering the notice as satisfactory as any that could have been suggested; and I have to express the hope that the President will take the same view of it.

[*Mr. McLane to Lord Aberdeen*]

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has already had the honor to acquaint the Earl of Aberdeen, Her Majesty's Principal Secretary of State for Foreign affairs, that the Undersigned has received from his government a notice from the President of the United States, given in pursuance of a joint resolution of both Houses of Congress, for the abrogation of the Convention of the sixth of August eighteen hundred and twenty seven between Great Britain and the United States, in accordance with the terms prescribed in it's second article; which notice addressed to Her Majesty, and signed by the President; countersigned by the Secretary of State and sealed with the seal of the United States, is in the following words—

[Here follows the notice in full]

The Undersigned has also stated to the Earl of Aberdeen that he has been especially instructed to deliver the notice in the foregoing form to Her Britannic Majesty in person, or to Her Majesty's Principal Secretary of State for Foreign Affairs, after the Undersigned shall have ascertained which of these modes will be most in accordance with Her Majesty's wishes.

The undersigned has also acquainted the Earl of Aberdeen with the suggestion of the Secretary of State of the United States that the delivery of the notice might be made the subject of a Protocol in Triplicate, one copy of which should remain with the British Government, another with the Legation of the United States at London, and the third be transmitted to the Department of State at Washington:

And the undersigned having been informed by the Earl of Aberdeen, in answer to these communications, that the delivery of the notice to Her Britannic Majesty in person would be irregular; and that in conformity with the usage in such cases, the notice should be delivered to Her Majesty's Principal Secretary of State for Foreign affairs, by note addressed to him by the undersigned for that purpose, and not in the mode suggested by the Secretary of State of the United States;

The undersigned therefore, conforming to the mode preferred by His Lordship, as the most regular and most in conformity with the usage in such cases, has the honor to enclose to the Earl of Aberdeen, Her Majesty's Principal Secretary of State for Foreign affairs, the said notice from the President of the United States, for the abrogation of the convention aforesaid, in the form in which it has been

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transmitted to the undersigned from His Government; and to request that the Earl of Aberdeen will acknowledge the receipt of this note, and the delivery of the notice for the purpose for which it is delivered.

The undersigned takes the opportunity to renew to the Earl of Aberdeen the assurance of his distinguished consideration.

(signed) LOUIS MCLANE

38 HARLEY STREET CAVENDISH SQUARE
20 May 1846.

[*Lord Aberdeen to Mr. McLane*]

The Undersigned, Her Majesty's Principal Secretary of State for Foreign Affairs, has had the honour to receive the Note of Mr McLane, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, dated the 20th, and delivered in on the 21st, instant, inclosing a Document dated the 28th day of April, signed by the President of the United States of America, and countersigned by the Secretary of State, in which, after reciting a joint resolution concerning the Oregon Territory which has been adopted by the Congress of the United States, the President, in conformity with the terms of that resolution, gives to Her Britannick Majesty's Government the notice required by the second Article of the Convention of the 6th of August 1827 between Great Britain and the United States, for the abrogation of the same.

The Undersigned acknowledges accordingly, on the part of Her Majesty's Government, the receipt of the said notice, and declares that, in conformity with its tenour, Her Majesty's Government will consider the Convention of the 6th of August 1827 abrogated accordingly from the 21st day of May 1847.

The Undersigned has the honour to renew to Mr McLane the assurances of his high consideration.

ABERDEEN

FOREIGN OFFICE, *May 22. 1846.*
LOUIS MCLANE Esq.

However, by the entry into force of the Oregon Treaty on July 17, 1846, with its definitive boundary clauses, the convention of August 6, 1827, was superseded and the "joint occupation" of the Oregon country was legally at an end; the abrogation of the convention of 1827 was thus rendered of no future importance.

There was destined, however, to be another "joint occupation", military in character, of a very small area of the Oregon country; during the controversy over the water boundary local friction developed on San Juan Island (of about fifty square miles, lying east of Haro Strait), where the Hudson's Bay Company had established a station and where there were living "twenty-five Americans, with their families" (Senate Executive Document No. 29, 40th Congress, 2d session, serial 1316, p. 148); this resulted in the so-called "pig war" of 1859 (the sole casualty being one pig), and was followed by an arrangement for the stationing on San Juan Island of small detachments (seemingly not more than 100 strong) of United States infantry and of British marines; papers regarding the occupation are in *ibid.*, 143–270; see also British and Foreign State Papers, L, 796–801, and LV, 743–90; the joint military occupation of San Juan Island continued until November 1872 (Washington Papers, V, 270–71). For the geographical position of the island, see the map facing page 100.

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The Exchange of Ratifications

The United States instrument of ratification of the Oregon Treaty was sent to London by General Robert Armstrong, consul at Liverpool, as bearer of despatches (D.S., 15 Instructions, Great Britain, 314–15, June 22, 1846); the instruction to McLane was of the same date (*ibid.*, 315–16), and he was furnished with the usual full power (D.S., 3 Credences, 178, June 20, 1846). The papers reached London on July 11.

In the meantime, on July 6, 1846, the Government of Sir Robert Peel had been succeeded by that of Lord John Russell, with Viscount Palmerston as Secretary of State for Foreign Affairs; and it was with the latter that McLane exchanged the ratifications on July 17. The notes leading up to the appointment for the purpose are quoted as of some procedural interest (D.S., 56 Despatches, Great Britain, No. 65, July 17, 1846, enclosures; the latter of the two is an original):

[*Mr. McLane to Lord Palmerston*]

The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has the honor to acquaint Lord Viscount Palmerston, Her Majesty's Principal Secretary of State for Foreign Affairs, that the Treaty concluded on the fifteenth ultimo between the United States and Great Britain for the adjustment of the Oregon question has been ratified by the President on the part of the United States; and that the Undersigned has received the President's ratification in order that it may be exchanged against that of Her Britannic Majesty.

The Undersigned has also the honor to acquaint Lord Palmerston that he has been authorized by special power from the President to exchange the ratifications of the Treaty with such person as may be duly empowered for that purpose on the part of Her Majesty's government.

The treaty as concluded, and ratified by the President appearing to be in all respects identical with the projet submitted on the part of Her Majesty's Government, the ratification on the part of Her Majesty may be anticipated as not likely to occasion any hesitation; and the undersigned has been instructed to express a desire on the part of the President that he should be able before the adjournment of Congress to acquaint that Body with the final consummation of an act which, he cherishes the hope, may be regarded as establishing the foundation of a cordial and lasting amity between the two countries. The undersigned has the honor to state also that in order to comply with the President's wishes, it will be necessary that the undersigned should be enabled, by a previous exchange of the ratifications, to transmit the ratification on the part of Her Majesty to his government by a Special Messenger whom he proposes to despatch from London for that purpose on the eighteenth Instant; and he has the honor therefore, to request that Lord Viscount Palmerston would be pleased to take such steps as may appear to him to be proper for the completion of the requisite ceremonials in season for that purpose.

The Undersigned takes the occasion to renew to Lord Viscount Palmerston the assurance of his distinguished consideration.

(Signed) Louis McLane

38 Harley Street *July 13th 1846*

[*Lord Palmerston to Mr. McLane*]

Lord Palmerston presents his Compliments to Mr McLane, and will be happy to have the honour of receiving him at the Foreign Office on Friday next [July 17] at Three O'Clock, for the purpose of exchanging the Ratifications of the Treaty

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for the settlement of the Oregon Boundary. It will be necessary to collate the respective Ratifications previously to their being exchanged; and if Mr McLane should not wish to do this himself, he will perhaps have the goodness to send the Secretary of his Legation to the Foreign Office for the purpose, with the President's Ratification, half an hour before the time fixed for the exchange.

FOREIGN OFFICE *July 15. 1846*

ARTICLES 3 AND 4

The act of September 27, 1850, "to create the Office of Surveyor-General of the Public Lands in Oregon, and to provide for the Survey, and to make Donations to Settlers of the said Public Lands" (9 Statutes at Large, 496–500), contained, in sections 4 and 11, provisions regarding treaty rights to lands in the Territory of Oregon; that territory then included "all that part of the Territory of the United States which lies west of the summit of the Rocky Mountains, north of the forty-second degree of north latitude" (*ibid.*, 323–31, act of August 14, 1848).

Under the treaty with Great Britain signed at Washington July 1, 1863, the possessory rights of the Hudson's Bay Company and the property of the Puget's Sound Agricultural Company referred to in Articles 3 and 4 of the Oregon Treaty were, pursuant to the award of September 10, 1869, acquired by the United States for the respective sums of $450,000 and $200,000. An account of the claims of the two companies and of the proceedings had is in Moore, International Arbitrations, I, 237–70; see also the papers of the "British and American Joint Commission for the Final Settlement of the Claims of the Hudson's Bay and Puget's Sound Agricultural Companies", printed in 1865–69 in fourteen volumes, including an index.

The arbitral decision of the German Emperor regarding the water boundary (referred to below) was dated October 21, 1872; there was approved on June 20, 1874, "An act to ascertain the possessory rights of the Hudson's Bay Company and other British subjects within the limits which were the the subject of the award of His Majesty the Emperor of Germany under the treaty of Washington of May eight, eighteen hundred and seventy-one, and for other purposes", providing in part as follows (18 Statutes at Large, pt. 3, 129–30):

That a commissioner be appointed by the President of the United States, to make, and report to the Secretary of the Interior, a list of all British subjects who, on the fifteenth day of June, eighteen hundred and forty-six, were in the occupation of land, lawfully acquired, within the limits which were the subject of the award of His Majesty the Emperor of Germany, together with a description of the land actually occupied by each at said date; and said commissioner shall proceed to the vicinity of the land in question, and there receive proof of the occupancy of such land and of the mode by which such occupancy was acquired, after first giving reasonable notice as to the said matters to be so reported by him. Such proof shall consist of oral testimony, under oath and such documentary proofs as the said occupants may present. The testimony of all witnesses shall be reduced to writing and all documentary proof offered by the parties and received by the commissioner shall be attached to the deposition of the party offering such proofs, which testimony and proofs shall be submitted by said commissioner with his report, and such report shall be subject to review

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by the Secretary of the Interior, whose action thereon shall be final. For the purposes of this act, the said commissioner shall have authority to subpœna witnesses and to administer oaths and take testimony.

. . . . . .

SEC. 3. That all British subjects whose claims shall be approved by the Secretary, as provided in section one of this act, shall be allowed to purchase from the United States the land so designated at any time within one year from such approval, at the ordinary minimum price per acre where the lands are situated outside railroad limits, and at double minimum price where the lands are within railroad limits.

The statute cited had been recommended by the Secretary of the Interior (Columbus Delano) following representations made by the British Minister, Sir Edward Thornton (see the annual report of the former dated October 31, 1873, in House Executive Document No. 1, pt. 5, 43d Congress, 1st session, serial 1601, pp. xiii–xiv; see also the notes of December 4, 1873, in D.S., 16 Notes to the British Legation, 271–72, and 96 Notes from the British Legation).

On September 23 (or 24), 1874, Hazard Stevens was appointed Commissioner under the statute; his mission was duly performed, but no claims were presented; the following is from the annual report of the Secretary of the Interior (Zachariah Chandler) of October 31, 1875 (House Executive Document No. 1, pt. 5, 44th Congress, 1st session, serial 1680, p. iv; see also the annual report dated October 31, 1874, in House Executive Document No. 1, pt. 5, 43d Congress, 2d session, serial 1639, p. xvii):

The commissioner appointed by you, under the act of 20th June, 1874, to make and report to this Department a list of all British subjects who, on the 15th of June, 1846, were in the occupation of land, lawfully acquired, within the limits of the award of His Majesty the Emperor of Germany, together with a description of the land actually occupied by each person at said date, satisfactorily performed his duties. He reported that, after due notice given by publication for a period of more than thirty days, in a newspaper having extensive circulation on the islands in question, and by posting conspicuously the notice in all the post-offices in the archipelago, he proceeded in person to Victoria, British Columbia, where he was informed by the chief factor of the Hudson Bay Company that said company would present no claim under said act. He then proceeded to San Juan and Lopez, but no British subject presented any claim under the act. You accordingly, on the 3d of August last, issued a proclamation terminating the withdrawal made by your previous proclamation of 4th February, 1873, which was issued in order to protect the rights of British subjects under the treaty of 15th June, 1846. Said termination took effect on the 30th ultimo, and the lands are now open to disposal as other public lands, except such as have been reserved by your orders for military and light-house purposes.

The two proclamations mentioned in the report of the Secretary of the Interior are so entitled; but in substance and wording, aside from the titles, they are Executive orders; neither is under seal and each is countersigned by the Commissioner of the General Land Office. The originals have not been found; printed copies are in the files of the Department of the Interior and the texts which follow are from photostats thereof in the archives of the Department of State:

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No. 777.

By the President of the United States.

PROCLAMATION.

Whereas, by the award of the Emperor of Germany, under date of October 21, 1872, certain territory heretofore held by joint occupation of Great Britain and the United States, including the island of San Juan and other islands, in the district of lands subject to sale at Olympia, Washington Territory, is decided to belong to the jurisdiction of the United States; and

Whereas, it appears that there are many subjects of Great Britain now in occupancy of portions of the said territory, whose rights and possessory titles are claimed to be protected by the provisions of the Treaty with Great Britain, made at Washington June 15, 1846, and by certain arrangements for the joint occupation of said territory existing between the Government of the United States and the Government of Her Britannic Majesty;

Now, therefore, it is hereby ordered that all tracts or parcels of land included in the said award be withheld from sale or disposal of any nature, under preemption, homestead, or other laws of the United States, until after the claims of the occupants above mentioned shall have been adjusted and public notice thereof given.

Given under my hand, at the City of Washington, this fourth day of February, A.D. 1873.

U. S. GRANT,
President of the United States.

By the President:
WILLIS DRUMMOND,
Commissioner of the General Land Office.

(No. 808.)

By the President of the United States.

PROCLAMATION.

Whereas, by proclamation of the President of the United States of the 4th day of February, 1873, it was ordered that all tracts or parcels of land included in the award of the Emperor of Germany under date of October 21, 1872, deciding certain territory formerly held by joint occupation of Great Britain and the United States, including the island of San Juan and other islands in the district of lands subject to sale at Olympia, Washington Territory, to belong to the jurisdiction of the United States, should be withheld from sale or disposal of any nature under preemption, homestead, or other laws of the United States, until after the claims of parties whose rights and possessory titles in said territory were claimed to be protected by the provisions of the Treaty with Great Britain made at Washington June 15, 1846, and by certain arrangements for the joint occupation of said territory existing between the Government of the United States and the Government of Her Britannic Majesty, should have been adjusted and public notice thereof given; and, *whereas*, pursuant to the Act of Congress of June 20, 1874, a Commissioner was duly appointed and proceeded to the vicinity of the lands in question, gave reasonable notice of his readiness to receive proof in support of such claims, and none were presented; Now, therefore, it is hereby ordered that from and after the 30th day of October, 1875, the withdrawal of all tracts or parcels of lands from sale or disposal under the proclamation aforesaid shall cease and determine, and said lands thereafter be open to disposal as other public lands of the United States.

Given under my hand, at the City of Washington, this *Third* day of *August*, A.D. 1875.

U. S. GRANT,
President of the United States.

By the President:
S. S. BURDETT,
Commissioner of the General Land Office.

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The Boundary as Now Demarcated

The boundary between the United States and Canada from the summit of the Rocky Mountains to the Pacific Ocean is to be considered in two portions, the land boundary and the water boundary.

The land boundary, running eastward from Georgia Strait (Point Roberts) to the summit of the Rocky Mountains, was first demarcated between 1857 and 1862; on the part of the United States specific provision for that demarcation was made by the act of August 11, 1856 (11 Statutes at Large, 42). By that original demarcation the boundary was, as now, located by a series of straight lines running between monuments, and not following the curve of the parallel. For an account of that first demarcation, see Baker, Survey of the Northwestern Boundary of the United States, 1857–1861; also Klotz, "The History of the Forty-ninth Parallel Survey West of the Rocky Mountains" (in Geographical Review, III, 382–87). The forthcoming report of the International Boundary Commission on the boundary from the Gulf of Georgia to the northwesternmost point of the Lake of the Woods will include a history of the first demarcation of this portion of the boundary.

A protocol approving and adopting the seven maps of the original demarcation, certified and authenticated by the Commissioners of the two Governments, was signed at Washington on February 24, 1870.

The existing land boundary is shown by the present maps of the International Boundary Commission entitled "International Boundary from the Gulf of Georgia to the Northwesternmost Point of the Lake of the Woods". The series comprises fifty-nine maps (sheets 1 to 59, inclusive) on a scale of 1:62,500, and there are also an index sheet and a profile sheet. The line eastward from Point Roberts to the summit of the Rocky Mountains is shown on sheets 1 to 19, inclusive; the summit of the Rocky Mountains appears on sheet 19. The charts are signed by the Commissioners of the United States and of His Britannic Majesty pursuant to Articles 6 and 7 of the treaty signed at Washington April 11, 1908. Sheets 1 to 19 were published in 1913.

The originals of those maps are on file in the Office of the United States Section of the International Boundary Commission; copies are obtainable from that office; the original maps will be submitted to the two Governments when the final report of the Commission on that portion of the boundary is presented.

The water boundary, westward from Point Roberts along the 49th parallel and continuing thence through Georgia Strait and through the Straits of Haro and Juan de Fuca to the Pacific Ocean, a distance of 150 miles, was the subject of an extended diplomatic controversy, the history of which is treated in Moore, International Arbitrations, I, 196–236, with numerous citations (see the map facing this page; also Paullin, *op. cit.*, plate 96 C and pp. 71–72).

Prolonged discussions led to no agreement between the two Governments prior to the convention for the submission of the dispute to

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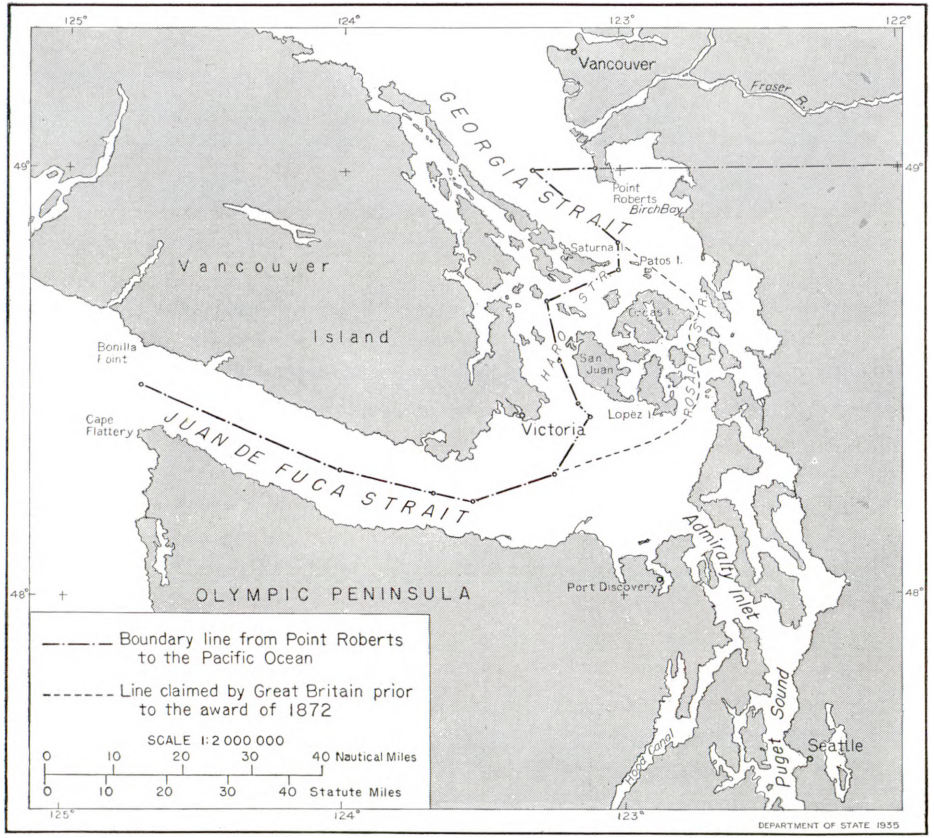

BOUNDARY FROM THE 49TH PARALLEL TO THE PACIFIC OCEAN

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the arbitration of the President of the Swiss Confederation, which was signed at London on January 14, 1869, by Reverdy Johnson and Lord Clarendon as the respective Plenipotentiaries of the United States and Great Britain (Foreign Relations, 1868, pt. 1, 404–5); but that convention failed to go into force, as it was "not favorably regarded by the Senate" (Moore, *op. cit.*, 224).

By the provisions of Articles 34–42 of the Treaty of Washington of May 8, 1871, the question as to whether the line should be drawn southerly through Rosario Strait, which was the contention of the British Government, or through Haro Strait (Canal de Haro), as claimed by the United States, was submitted to the German Emperor for decision (see Washington Papers, V, *passim*). The decision of the German Emperor that the line should be drawn through Haro Strait was rendered on October 21, 1872; and a protocol describing the line, accompanied by signed charts on which the same was drawn, was signed at Washington on March 10, 1873 (see Moore, *op. cit.*, 226–35).

The line of the water boundary was reestablished pursuant to the treaty with Great Britain signed at Washington April 11, 1908; the elaborate report of the International Boundary Commission was published in Washington in 1921 (Joint Report upon the Survey and Demarcation of the Boundary between the United States and Canada from the Western Terminus of the Land Boundary along the Forty-ninth Parallel, on the West Side of Point Roberts, through Georgia, Haro, and Juan de Fuca Straits, to the Pacific Ocean); with that report is a copy of the Joint Chart of the International Boundary between United States and Canada from the Forty-ninth Parallel to the Pacific Ocean; the chart is on a scale of 1:200,000; the original report and two identic original charts, signed by the Commissioners of the United States and of His Britannic Majesty, are in the archives of the Department of State; the detailed description of the boundary is at pages 37–41 of the report, which includes historical and geographical appendices; from its introduction (p. 7) the following general statement of the line is excerpted:

> the line as now reestablished consists of twelve straight line courses, the ends of which are fixed by reference marks on the shore. It has a total length of 150 statute (130¼ nautical) miles. Beginning at the western terminus of the land boundary along the forty-ninth parallel on the west side of Point Roberts (a peninsula extending south from the mouth of the Fraser River, B.C.), the line runs westward to the middle of Georgia Strait; thence southeastward through Georgia Strait to a point off Saturna Island; thence southward between Saturna and Patos Island, through Haro Strait, to Middle Bank Shoal; thence southwestward, then northwestward through Juan de Fuca Strait to the terminus at the Pacific Ocean.

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VENEZUELA : NOVEMBER 16, 1846

Convention for the Settlement of the Case of the Brig "Native", signed at Caracas November 16, 1846. Original in English and Spanish. Not subject to ratification by the United States. As to ratification by Venezuela, see the editorial notes. Not proclaimed.

Convention concerning the claim of the american Brig Native

The undersigned Benjamin G. Shields Chargé d'Affairs of the United States of America and John Emanuel Manrique Secretary of State of the Department of Foreign Relations of the Government of Venezuela, being duly authorized to form an equitable agreement for the payment of the twenty eight and a half per cent which pertains to Venezuela in the indemnification claimed by the owners of the north american Brig Native which was seized during the existence of Colombia by the Schooner of war Independence, have agreed to conclude and seal at all points this affair in the terms following:

ARTICLE 1st

The Gobernment of Venezuela obligates itself to pay to the order of the Chargé d'Affs. of the United States with the previous

Convencion sobre el reclamo relativo al bergantin americano Native.

Los infraescritos Benjamin G. Shields, Encargado de Negocios de los Estados Unidos de América y Juan Manuel Manrique Secretario de Estado del Despacho de Relaciones Exteriores del Gobierno de Venezuela, estando debidamente autorizados para celebrar un arreglo equitativo para el pago del veinte y ocho y medio por ciento que corresponde á Venezuela en la indemnizacion reclamada por los dueños del bergantin norteamericano "Native" que fué apresado en tiempo de Colombia por la goleta de guerra Independencia, han convenido en dejar concluido y sellado de todo punto este asunto en los términos siguientes:

ARTÍCULO 1º

El Gobierno de Venezuela se obliga á pagar á la órden del Señor Encargado de Negocios de los Estados Unidos, previa la

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approbation of the Congress of Venezuela the sum of ($9.550) nine thousand five hundred and fifty dollars macuquinos in absolute indemnification of all losses and damages which the owners and persons interested in the Brig Native have claimed of Venezuela through the Legation of the United States, who shall have no right hereafter to prefer any new claim that may have origin in the circumstances of this case

ARTICLE 2d

Said sum of ($9.550) nine thousand five hundred and fifty dollars macuquinos shall be paid at the Treasury in two equal portions on the 1st of July and 1st of October in the year eighteen hundred and forty seven.

ARTICLE 3d

This Convention shall be submitted to the Congress of Venezuela at its next session in order that it may appropriate the sum necessary for its faithfull execution.

In faith of which the undersigned have signed two agreements of one tenor in Caracas November the sixteenth, eighteen hundred and forty six.

B. G SHIELDS
Charge d'Affaires of the U. States of America to the Republic of Venezuela

Jn M. MANRIQUE

aprobacion del Congreso venezolano, la cantidad de ($9.550) nueve mil quinientos y cincuenta pesos macuquinos por indemnizacion absoluta de todos los pérdidos y perjuicios que han reclamado de Venezuela por conducto de la Legacion de su pais los dueños é interesados en el bergantin Native los cuales no tendran derecho para intentar ninguna nueva reclamacion que tenga origen en las circunstancias de este caso.

ARTÍCULO 2º

Dicha suma de ($9.550) nueve mil quinientos cincuenta pesos macuquinos se pagará por Tesoreria en dos porciones iguales el dia 1º de julio y el dia 1º de octubre de mil ochocientos cuarenta y siete.

ARTÍCULO 3º

Esta Convencion será sometida al Congreso de Venezuela en sus próximas sesiones para que se sirva destinar la suma necesaria para su fiel ejecucion.

En fé de lo cual los infraescritos han firmado dos de un tenor en Caracas á diez y seis de noviembre de mil ochocientos cuarenta y seis.

B. G. SHIELDS
Chargé d'Affaires of the United States of America to the Republic of Venezuela

Jn M. MANRIQUE

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NOTES

The original of this convention, in English and Spanish, is with the despatch of Benjamin G. Shields, Chargé d'Affaires at Caracas, of December 1, 1846 (D.S., 4 Despatches, Venezuela, No. 30). In that original the text is written in parallel columns, the English version at the left.

While neither in the convention nor in the despatches is there any mention of full powers, Shields had been given a full power under date of March 24, 1845, authorizing him to "agree, treat, consult and negotiate of and concerning claims of citizens of the United States against the late Republic of Colombia and the said Republic of Venezuela" (D.S., 3 Credences, 122).

The convention received the approval of the Congress of Venezuela by a decree of May 12, 1847 (D.S., 4 Despatches, Venezuela, No. 40, May 25, 1847, enclosure); that decree, including the Spanish version of the convention, is printed in Recopilacion de leyes y decretos de Venezuela, II, 432–33.

The Case of the "Native"

This was the first convention made with one of the successor states of the Republic of Colombia in respect of the claim arising out of the capture in November 1828 of the brig *Native*. The circumstances of the capture of the brig and the claim in respect thereof are set forth in a letter of Seth Driggs, the claimant, to James Semple, Chargé d'Affaires at Bogotá, under date of June 16, 1838 (D.S., Colombian Claims, folder *Native*), as follows:

after the British Colonial ports were closed against American shipping an indirect trade was carried on through Guiria a small port in Venezuele opposite to Trinidad, at Guiria American cargoes were transhipped by British vessels to Trinidad the Brig Native had made several voyages of this nature.

In November 1828 she arrived at Guiria at a time when the place was in a state of revolution the vessel was reported to the existing authorities, and permission given to tranship the cargo by an English vessel to Trinidad where it was consigned, after taking a part of the cargo from the Native, the National Schooner of War Independencia arrived with troops on board and captured the Brig Native because she was there under the Authority of the Revolutionary Party, and without Authority from the Legitimate Government, she was taken to Cumana and there condemned, afterwards sent to Porto Cabello where she lay a long time until her bottom was nearly destroyed by worms, the vessel and cargo were sold for a mere song by the Authorities the proceeds were not sufficient to pay the expense in the interim and appeal was made to the Supreme Court at Carracas and the seizure of the vessel was declared illegal and property ordered to be restored, but it was already sold and the proceeds only paid over and applied towards paying the expenses which are as follows.

Wages of Capt Davis & crew with their expenses	850.
Bill of Expenses incurred by Mr Driggs the Consignee at Guiria, Cumana & Caracas	771. 60
Expenses paid by the U.S. Consul at Porto Cabello	243. 75
	$1865. 35

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Cr

Nett sale of vessel	500	
do Cargo	1250. 88	1750. 88
Balance		114. 47
Add sundry out standing debts including in sales and not recovered		177. 78
Balance due the owners		$292. 25

Recapitulation

Valuation of Cargo when Captured	5828. 68
do of vessel	5000.
Balance of Expenses after deducting Proceeds of vessel & Cargo at Porto Cabello	292. 25
	$11120. 93
Interest on the above sum for 10 years @ 6 p.c.	6672. 55
Balance due in Nov. 1838	$17, 793. 48

The above-mentioned figure of $17,793.48 claimed by Driggs was, with some reluctance, accepted by the Plenipotentiary of Venezuela as the basis of settlement. Certain interest was added, and the total of the respective claims against the three states formerly comprising the Republic of Colombia, namely, New Granada, Venezuela, and Ecuador, was put at $33,500 *macuquinos*, the proportionate share of Venezuela, or 28½ percent, being $9,550. (As to the liability of the three successor states in respect of claims against the former Republic of Colombia, see the notes to Document 67.)

In his despatch of December 1, 1846, Shields wrote regarding the settlement as follows (D.S., 4 Despatches, Venezuela, No. 30):

> In the settlement of the claim in the case of the Brig Native, I have secured a larger indemnity than I expected to be able to do, from the conferences had with the Minister of Foreign Affs. during May last, as detailed in my despatch Nº 17. Then he offered only twelve thousand dollars, as the amount to be recognized for the whole claim, upon which Venezuela should pay her 28½ per cent, refusing to entertain the question of interest. In framing the convention the sum of $17,793.48 in specie—the amount of the claim, as presented by Mr. Semple to the Bogota commission in 1839, with six per cent interest thereon, from the date of said presentation to the first of July next, and a fraction over, was adopted as the sum total of the claim, upon which Venezuela is to pay her 28½ per cent, amounting to $9,550. in Macuquino. Mr. Semple, in his letter to the Commissioners, adopted the amount stated in the affidavit of the claimant, which amount, by a letter from Mr. Bidlack of the 23rd July last, I learn, was composed of the following items, to wit,
>
> | | |
> |---|---|
> | Valuation of vessel | $5. 000. |
> | do Cargo | 5. 828. 68 |
> | Balance of expenses | 292. 25 |
> | | $11. 120. 93 |
> | Interest at 7 [6] per ct. up to November 1838 | 6. 672. 55 |
> | | $17. 793. 48 |

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It thus appears that by the convention, the claimant are to realize so far as Venezuela is concerned, the full value of the vessel, cargo and balance of expenses, as originally estimated, and interest thereon at the rate of *seven*[six]per cent per annum from the date of seizure to November 1838, and upon the amount of principal and interest compounded at this date, interest at the rate of six per cent from February 16th 1839 until the 1st of July 1847 with a small fraction over—enhancing the sum total of the claim against all three of the Colombian States to something over $33.500. dollars Macuquinos. In connection with this should also be considered, the sum realized from the sale of the vessel and remainder of the cargo in the early part of the year 1829, amounting to something over $2270.00, which by order of the tribunals was paid over to the claimants after termination of the suit, and of course was to be taken into the account in fixing the amount of indemnification for the damages suffered. This sum reduced to Macuquino and added to the former, will make an aggregate of $36.337.50 of that denomination, the value of which in specie dollars is $29,070. which the claimants will have realized, in the event that each State should pay its respective proportion of the amount of the claim, as recognized by Venezuela.

The Settlement

This convention was for the final settlement of the case of the *Native* so far as Venezuela was concerned. An act of the Congress of Venezuela of May 19, 1847, contained an appropriation of $9,550 for execution of the convention (Recopilacion de leyes y decretos de Venezuela, II, 444); and the stipulated payments were duly made (D.S., Colombian Claims, folder *Native*, letter of Seth Driggs to Thomas M. Foote of February 20, 1850).

For an explanation of the term *macuquinos*, see the notes to the convention with Venezuela of November 16, 1846, in the case of the *Josephine* (Document 124).

As to the settlements reached with New Granada and Ecuador in the case of the *Native*, see the notes to the conventions with New Granada of April 25, 1848 (Document 131), and with Ecuador of February 5, 1853.

The Instructions

The earliest instruction written regarding the case of the *Native* was that of February 14, 1831, to Thomas P. Moore, Minister to Colombia, as follows (D.S., 14 Instructions, American States, 138–39):

I herewith transmit to you a series of documents, Nº 1 to 10, which have been sent to this Department for that purpose, by Mr Ingersoll, a Representative in Congress from Connecticut.[1] They constitute the evidence intended to establish a claim upon the Government of Colombia, by Messrs. Forbes & Sons, and others, of New Haven, owners and underwriters of the brig *Native*, of that place, seized by a Colombian vessel of war, and carried to Puerto Cabello, where, after certain judicial proceedings, in a prize court, restitution was ordered, but no damages awarded in the case, in consequence of which an almost total loss of the vessel and cargo then on board, accrued to the owners and underwriters. From these documents it appears that the "Native" was, when seized, engaged in a lawful trade under the existing treaty between the United States and Colombia, and the established regulations of that country; and the sentence of restitution of the property, sufficiently establishes the illegality of the seizure. This, and the long delay and heavy expenses attending the suit, seem, therefore, to con-

[1] Ralph Isaacs Ingersoll, subsequently Minister to Russia.

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stitute a just claim to indemnity upon the Colombian Government, which will, no doubt, be recognised when presented in an official manner. You will avail yourself of some early opportunity to demand justice in this case, and urge the adjustment of the claim upon all the considerations which the information contained in the papers herewith transmitted will suggest in support of it.

In the instruction of June 23, 1845, to Benjamin A. Bidlack, Chargé d'Affaires at Bogotá, it was said that the *Native* arrived at Güiria in the Gulf of Paria on November 2, 1828, and was captured on the following November 12; the amount then claimed was given as $14,143.45 (D.S., 15 Instructions, Colombia, 93–100).

Under date of June 25, 1847, Shields was informed of the gratification of the President with the success of his efforts in respect of the claim in the case of the *Native*, and this was added: "It is believed that Mr Seth Driggs is the sole claimant in the case of the Native. If, therefore, you shall be satisfied that the documents on file in the Legation are sufficient to establish his right to the money, you may pay it to him" (D.S., 1 Instructions, Venezuela, 67).

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VENEZUELA : NOVEMBER 16, 1846

Convention for the Final Settlement of the Case of the Brig "Josephine", signed at Caracas November 16, 1846. Original in English and Spanish.
Not subject to ratification by the United States. As to ratification by Venezuela, see the editorial notes. Not proclaimed.

Convention for the settlement of the claim for interest and other losses in favor of the owners and persons interested in the Brig Josephine

The undersigned Benjamin G Shields, Chargé d'Affaires of the Unted States of America, and John Emanuel Manrique, Secretary of State of the Department of Foreign Relations of Venezuela, being duly authorized to effect an equitable agreement for the payment of the twenty eight and a half per cent which pertains to Venezuela, of certain interests and other losses which those interested in the North American Brig, "Josephine", allege they have experienced, have agreed to conclude and seal this affair at all points in the terms following.

ARTICLE 1st

The Government of Venezuela obligates itself to pay to the order of the Chargé d'Affaires of the United States, with the pre-

Convencion para el arreglo de la reclamacion de intereses y otras pérdidas intentada en favor de los dueños é interesados en el bergantin Josephine.

Los infraescritos Benjamin G. Shields, Encargado de Negocios de los Estados Unidos de América, y Juan Manuel Manrique Secretario de Estado del Despacho de Relaciones Exteriores del Gobierno de Venezuela, estando debidamente autorizados para celebrar un arreglo equitativo para el pago del veintiocho y medio por ciento que corresponde á Venezuela en el valor de ciertos intereses y otras pérdidas que alegan haber experimentado los interesados en el bergantin norte-americano "Josephine" han convenido en dejar concluido y sellado de todo punto este asunto en los términos siguientes.

ARTÍCULO 1º

El Gobierno de Venezuela se obliga á pagar á la órden del Señor Encargado de Negocios de los Estados Unidos, previa la

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vious approbation of the Congress of Venezuela, Five thousand four hundred and fifty three $\frac{76}{100}$ dollars macuquinos, in absolute indemnification of all losses and damages arising out of the claim made by those interested in the Brig "Josephine", and they shall have no right to prefer any new demand or claim that may originate in the circunstances of this case.

ARTICLE 2d

Said sum of Five thousand four hundred and fifty three $\frac{76}{100}$ dollars macuquinos shall be paid by the Treasury in two equal portions on the 15th July and 15th October in eighteen hundred and forty seven.

ARTICLE 3d

This convention shall be submitted to the Congress of Venezuela during its next session, to the end that it may appropriate the sum necessary for its faithfull execution.

In faith of which the undersigned have executed two agreements of one tenor in Caracas on the sixteenth of November eighteen hundred and forty six.

B. G. SHIELDS
Charge d'Affaires of the U States of America to the Republic of Venezuela.

Jn M. MANRIQUE

aprobacion del Congreso venezolano, cinco mil cuatrocientos cincuenta y tres pesos $\frac{76}{100}$ macuquinos por indemnizacion absoluta de todas las pérdidas y perjuicios provenientes del reclamo que hacen los interesados en el bergantin "Josephine", y no tendran estos derecho para intentar ninguna nueva demanda ó reclamacion que tenga orígen en las cincunstancias de este caso.

ARTÍCULO 2º

Dicha suma de cinco mil cuatrocientos cincuenta y tres pesos $\frac{76}{100}$ macuquinos se pagará por Tesoreria en dos porciones iguales el dia 15 de Julio y el 15 de octubre de mil ochocientos cuarenta y siete.

ARTÍCULO 3º

Esta convencion será sometida al Congreso de Venezuela en sus próximas sesiones, afin de que se sirva destinar la suma nenecaria para su fiel ejecucion.

En fé de lo cual los infraescritos han autorizado dos de un tenor en Caracas á diez y seis de Noviembre de mil ochocientos cuarenta y seis.

B G SHIELDS
Charge d'Affaires of the U. States of America to the Republic of Venezuela

Jn M. MANRIQUE

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NOTES

The original of this convention, in English and Spanish, is with the despatch of Benjamin G. Shields, Chargé d'Affaires at Caracas, of December 1, 1846 (D.S., 4 Despatches, Venezuela, No. 30). In that original the text is written in parallel columns, the English version at the left. It appears from the despatch mentioned that while the convention is dated November 16, 1846, it was not, in fact, signed until the following December 1.

While neither in the convention nor in the despatches is there any mention of full powers, Shields had been given a full power under date of March 24, 1845, authorizing him to "agree, treat, consult and negotiate of and concerning claims of citizens of the United States against the late Republic of Colombia and the said Republic of Venezuela" (D.S., 3 Credences, 122).

The convention received the approval of the Congress of Venezuela by a decree of May 18, 1847 (D.S., 4 Despatches, Venezuela, No. 40, May 25, 1847, enclosure); that decree, including the Spanish version of the convention, is printed in Recopilacion de leyes y decretos de Venezuela, II, 436–37.

The Case of the "Josephine"

The case of the *Josephine* was dealt with in the conventions with Colombia of March 16, 1825, and of November 25, 1829 (Documents 48 and 67), and also in the convention with New Granada of May 16, 1846 (Document 119); the notes to those conventions should be consulted.

That part of the case of the *Josephine* which was settled by this convention was thus stated in the note of Shields to the Minister of Foreign Affairs of Venezuela dated October 6, 1846 (D.S., 3 Despatches, Venezuela, No. 26, October 7, 1846, enclosure):

> On the 25th November 1829 a convention was effected between the Minister Plenipotentiary of the U. States at Bogota, Thomas P. Moore esq., and the Minister of Foreign Affs. of the Republic of Colombia, el Señor Estanislao Vergara, for payment to certain claimants, citizens of the United States, of balances due them upon claims omitted to be provided for to the full amount by the terms of a previous convention, concluded on the 16th March 1825 in Bogota between the respective Plenipotentiaries then representing the two Governments mentioned. By the first article of said convention the owners of the Brig Josephine and her cargo were to be paid within the term of six months from the date thereof, the sum of twenty thousand two hundred and fifty dollars and interest upon the same at the rate of six per cent per annum from the 27th January 1819, until the 16th March 1825 (the date of the previous convention)—the right being expressly reserved to the claimants by a note attached to said convention (of 25th November 1829), to assert their claim any time thereafter to the additional interest to which they conceived themselves entitled upon said sum, from the 16th March 1825 to the 25th November 1829. The dissolution of the Republic of Colombia prevented payment of the sum agreed upon at the time stipulated; and it was not until after the several States that composed said Republic fixed by conventional agreement between themselves the sevaral proportions of the debts thereof, to be paid by each, that any portion of the same was paid. On the 10th of August 1839 Venezuela paid, as her proportion of

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the amount the sum of $7894.11, without any interest for the term (of nine years, two months and seventeen days) during which payment of said proportion had been deferred. The interest upon said sum for this period at the rate of six per cent—the rate fixed by the convention for the anterior interest amounted to $4362.93, which was as justly, legally and equitably due the claimants as the principal, and should have been paid at the same time. Not having been paid at that time, but with-held in damage to the claimants, it is but just that the same rate of interest should be allowed them upon this sum, from the time when the principal upon which it accrued was paid, to the present time, or to the period when said sum may be paid by the Govt. of Venezuela.

By the terms of the convention it was a monied transaction, and in strict justice the parties are entitled to the rates of interest current upon money, for the whole period during which they have been deprived of the use of any portion of their money, either as principal or interest. A court of justice would award them such a rate of interest under such circumstances.

Upon the merits of their claim and in conformity with the condition upon which the Plenipotentiary of the U. States concurred in the terms of the convention of the 25th November 1829, as exhibited in the note to said convention before alluded to, the claimants have ever believed themselves entitled to the interest unprovided for during the term therein mentioned (from 16th March 1825 to 25th November 1829); and the Government of the U. States, concurring in this opinion, has repeatedly instructed its Diplomatic agents to prefer such claim in their behalf, which instructions it seems have not been fulfilled in a regular and formal manner in consequence of the interminable delays attending the settlement of other claims, which from their date or other circumstances, had been given precedence in the order of presentation. Wearied by such long delays and continued postponement, the claimants finally signified to these agents that if payment of their claim to interest upon the sum stipulated to be paid by the convention of 25th November 1829, from the time when said sum was stipulated to be paid (6 months after 25th November 1829) to the time when payment of the same was actually made (10th August 1839) together with interest upon this amount until the same should be paid, could be effected promptly, they wuld be willing to relinquish their claim to interest upon the principal sum from March 16th 1825 to november 25th 1829, as reserved in said convention.

The undersigned therefore feels authorized to make such settlement with the Government of Venezuela, the interest upon whose share of the debt for the time mentioned—25th May 1830 to 10th August 1839—amounted, as before stated, to the sum of $4,362.93, which with interest upon the same until the time of payment, would constitute the sum to be paid.

He is instructed by his Government to make known to the Govt. of Venezuela the terms upon which the claimants are disposed to settle the affair, and to request its concurrence therein without further delay.

Although unnecessary as a means of disposing the Govt. of Venezuela to render justice in the premises, it may not perhaps be amiss to state for the information of the Hon. Minister of Foreign Affs. that, from advices recently received from his colleague at Bogota, the Hon. B. A. Bidlack, he learns that that Govt. has joined him in a convention, which has been sanctioned by an appropriation on the part of the Congress of New Grenada for payment of the sum stipulated, as its share of the claim for interest [see Document 119].

The foregoing despatch refers to previous instructions; that of March 28, 1843, contains this paragraph (D.S., 1 Instructions, Venezuela, 40–41):

In regard to your remarks upon the claim of the Insurance Company of the State of Pennsylvania for further interest in the case of the Josephine, I have to state that that claim is considered by the Department to be well founded, and it is expected that you will prosecute it with all proper diligence and zeal. Notwithstanding provision is made by the first article of the Convention between Mr Moore and Mr Vergara of the 25th of November, 1829, for the interest between the 27th of January, 1819, and the 16th of March, 1825, only, yet Mr Moore's

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note expressly reserving the right to further interest and, as it were, making his approbation of the Convention a condition of that reservation, must be considered by this government as a substantive part of the Convention itself, imposing an obligation on the Colombian Government which cannot be discharged until the claim of the Insurance Company shall be satisfied.

The Settlement

This convention was for the final settlement of the case of the *Josephine* so far as Venezuela was concerned. An act of the Congress of Venezuela of May 19, 1847, contained an appropriation of $5,453.76 for execution of the convention (Recopilacion de leyes y decretos de Venezuela, II, 444); and the stipulated payments were duly made (D.S., 5 Despatches, Venezuela, No. 56, April 3, 1848; Miscellaneous Letters, April–June 1848, letter of May 4, 1848, from Simeon Toby).

The explanation of the equivalents of $4,362.93 and 5,453.76 "dollars Macuquinos" is thus given in the despatch of December 1, 1846, above cited:

> The sums stipulated in each convention [of November 16, 1846; see Document 123], as you will perceive, are payable in the currency of the country—dollars Macuquinos—which by law are valued at the rate of one dollar spanish to one dollar and twenty five cents macuquino; in other words, the macuquino dollar is worth eighty cents Spanish in the payment of debts. A five franc piece is also made by law equal to a Spanish dollar as a tender, which has had the effect of expelling from circulation all other coins of the dollar denomination; hence to find the commercial value in Spanish dollars, of any payment to be made in Macuquino, the conversion must first be made from the latter into five francs, and then from the five francs into Spanish dollars. In agreeing upon the sums stipulated in each convention, the amount was first agreed upon in legal specie dollars, and then converted into Macuquinos by the addition of one fourth, or twenty five per cent. There is no Macuquino coin now in circulation—the term is merely a legal money denomination, representing the value of eighty cents, or four of the five parts of a dollar.

In the instruction of June 25, 1847 (D.S., 1 Instructions, Venezuela, 67), Shields was informed of the gratification of the President with the success of his efforts in respect of the claim in the case of the *Josephine* and was directed to hold the moneys to be received "subject to the order of the Insurance Company of the State of Pennsylvania".

Still another convention dealing with the case of the *Josephine* is that with Ecuador of June 15, 1849 (Document 136).

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Treaty Series No. 54
9 Statutes at Large, 881-901
18 *ibid.*, pt. 2, Public Treaties, 550-59

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NEW GRANADA : DECEMBER 12, 1846

Treaty of Peace, Amity, Navigation, and Commerce, with additional article, signed at Bogotá December 12, 1846. Original in English and Spanish.
Submitted to the Senate February 15, 1847. (Message of February 10, 1847.) Resolution of advice and consent June 3, 1848. Ratified by the United States June 10, 1848. Ratified by New Granada July 15, 1847. Ratifications exchanged at Washington June 10, 1848. Proclaimed June 12, 1848.

A General Treaty of peace, amity, navigation and commerce between the United States of America and the Republic of New Granada.

The United States of North America and the Republic of New Granada in South America, desiring to make lasting and firm the friendship and good understanding which happily exists between both nations have resolved to fix in a manner clear, distinct and positive, the rules which shall in future be religiously observed between each other by means of a treaty, or general convention of peace and friendship, commerce and navigation.

For this desirable object the President of the United States of America has conferred full powers on Benjamin A. Bidlack a citizen of the said States and their Chargé d'Affaires in Bogotá, and the President of the Republic of New

Tratado jeneral de paz, amistad, navegacion i comercio entre la República de la Nueva Granada i los Estados Unidos de América

La República de la Nueva Granada en la América del Sur i los Estados Unidos del Norte América, deseando hacer firme i duradera la amistad i buena intelijencia que felizmente existen entre ambas naciones, han resuelto fijar de una manera clara, distinta i positiva las reglas que en lo futuro han de observarse relijiosamente entre una i otra, por medio de un tratado u convencion jeneral de paz i amistad, comercio i navegacion.

Para este apetecible objeto el Presidente de la República de la Nueva Granada ha conferido plenos poderes a Manuel María Mallarino, Secretario de Estado del Despacho de Relaciones Esteriores, i el Presidente de los Estados

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Granada has conferred similar and equal powers upon Manuel María Mallarino Secretary of State and foreign relations, who, after having exchanged their said full powers in due form, have agreed to the following articles.

ARTICLE 1st

There shall be a perfect, firm and inviolable peace and sincere friendship between the United States of America and the Republic of New Granada, in all the extent of their possessions and territories, and between their citizens respectilvely, without distinction of persons or places.

ARTICLE 2d

The United States of America and the Republic of New Granada, desiring to live in peace and harmony with all the nations of the earth, by means of a policy frank and equally friendly with all, engage mutually not to grant any particular favor to other nations, in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same freely, if the concession was freely made, or on allowing the same compensation, if the concession was conditional.

Unidos de América ha conferido semejantes e iguales poderes a Benjamin A. Bidlack, ciudadano de dichos Estados i su Encargado de Negócios en Bogotá, los cuales despues de haber canjeados sus dichos plenos poderes en debida forma, han convenido en los artículos siguientes.

ARTÍCULO 1º

Habrá una paz perfecta, firme e inviolable, i amistad sincera entre la República de la Nueva Granada i los Estados Unidos de América en toda la estension de sus posesiones i territorios, i entre sus ciudadanos respectivamente, sin distincion de personas ni lugares.

ARTÍCULO 2º

La República de la Nueva Granada i los Estados Unidos de América, deseando vivir en paz i armonía con todas las naciones de la tierra por medio de una política franca e igualmente amistosa con todas, se obligan mutuamente a no otorgar favores particulares a otras naciones con respecto a comercio i navegacion, que no se hagan inmediatamente estensivos a la otra parte, quien gozará de los mismos libremente, si la concesion fuere hecha libremente, u otorgando la misma compensacion, si la concesion fuere condicional.

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ARTICLE 3rd

The two high contracting parties, being likewise desirous of placing the commerce and navigation of their respective countries on the liberal basis of perfect equality and reciprocity, mutually agree that the citizens of each may frequent all the coasts and countries of the other, and reside and trade there, in all kinds of produce, manufactures and merchandize; and that they shall enjoy, all the rights, privileges and exemptions, in navigation and commerce, which native citizens do or shall enjoy, submitting themselves to the laws, decrees and usages there established, to which native citizens are subjected. But it is understood that this article does not include the coasting trade of either country, the regulation of which is reserved by the parties respectively according to their own separate laws.

ARTÍCULO 3º

Las dos altas partes contratantes deseando tambien establecer el comercio i la navegacion de sus respectivos países sobre la base liberal de igualad i reciprocidad perfectas, convienen mutuamente en que los ciudadanos de cada una de ellas puedan frecuentar todas las costas i territorios de la otra, i residir i traficar en ellos con toda espécie de producciones, manufacturas i mercaderías; i que gozarán de todos los derechos, privilejios i exenciones en navegacion i comercio, que los ciudadanos naturales gozen o gozaren, sometiéndose a las leyes, decretos i usos establecidos allí, a que estan sujetos los ciudadanos naturales. Pero debe entenderse que este artículo no incluye el comercio de cabotaje de cada uno de los dos países, cuyo arreglo se reservan las partes respectivamente, conforme a sus leyes particulares.

ARTICLE 4th

They likewise agre that whatever kind of produce, manufacture or merchandize of any foreign country can be, from time to time, lawfully imported into the United States in their own vessels, may be also imported in vessels of the Republic of New Granada; and that no higher or other duties upon the tonnage of the vessel and her cargo, shall be levied and collected, whether the importation be

ARTÍCULO 4º

Igualmente convienen una i otra en que cualquiera espécie de producciones, manufacturas o mercaderías estranjeras que puedan ser en cualquier tiempo legalmente importadas en la República de la Nueva Granada en sus propios buques, puedan ser tambien importadas en buques de los Estados Unidos; i que no se impondrán o cobrarán otros o mas altos derechos sobre las toneladas del buque,

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made in vessels of the one country or of the other. And in like manner, that whatever kind of produce, manufactures or merchandize of any foreign country, can be from time to time lawfully imported into the Republic of New Granada in its own vessels, may be also imported in vessels of the United States; and that no higher or other duties, upon the tonnage of the vessel and her cargo, shall be levied or collected, whether the importation be made in vessels of the one country or the other.

And they further agree, that whatever may be lawfully exported or reexported, from the one country, in its own vessels to any foreign country, may in like manner be exported or reexported, in the vessels of the other country. And the same bounties, duties and drawbacks, shall be allowed and collected, whether such exportation or reexportation, be made in vessels of the United States or of the Republic of New Granada.

ARTICLE 5th

No higher or other duties shall be imposed on the importation into the United States of any articles the produce or manufacture of the Republic of New Granada, and no higher or other duties shall be imposed on the importation into the Republic of New Gra-

o por su cargamento, sea que la importacion se haga en buques del uno u del otro país: i de la misma manera, cualquiera espécie de producciones, manufacturas o mercaderías estranjeras que puedan ser en cualquier tiempo legalmente importadas en los Estados Unidos en sus propios buques, puedan ser tambien importadas en los buques de la República de la Nueva Granada; i que no se impondrán otros o mas altos derechos sobre las toneladas del buque o por su cargamento; sea que la importacion se haga en buques del uno u del otro país.

Convienen ademas, en que todo lo que pueda ser legalmente esportado o reesportado de uno de los dos países en sus propios buques, para un país estranjero, pueda de la misma manera ser esportado o reesportado en los buques del otro: i serán concedidos i cobrados iguales premios, derechos, i descuentos, sea que tal esportacion o reesportacion se haga en los buques de la República de la Nueva Granada, o en los de los Estados Unidos.

ARTÍCULO 5º

No se impondrán otros o mas altos derechos sobre la importacion en la República de la Nueva Granada de cualesquiera artículos del producto natural o manufacturado de los Estados Unidos, i no se impondrán otros o mas altos derechos sobre la importacion en

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nada of any articles the produce or manufactures of the United States, than are or shall be payable on the like articles being the produce or manufactures of any other foreign country; nor shall any higher or other duties or charges be imposed in either of the two countries on the exportation of any articles to the United States or to the Republic of New Granada respectively, than such as are payable on the exportation of the like articles to any other foreign country, nor shall any prohibition be imposed on the exportation or importation of any articles, the produce or manufactures of the United States or of the Republic of New Granada to or from the territories of the United States or to or from the territories of the Republic of New Granada which shall not equally extend to all other nations.

los Estados Unidos de cualesquiera artículos del producto natural o manufacturado de la República de la Nueva Granada, que los que se exijan o exijieren por iguales artículos del producto natural o manufacturado de cualquiera otro país estranjero; ni se impondrán otros o mas altos derechos o gravámenes en ninguno de los dos países sobre la esportacion de cualesquiera artículos para la República de la Nueva Granada o para los Estados Unidos respectivamente, que los que deban exijirse por la esportacion de iguales artículos para cualquiera otro pais estranjero; ni se establecerá prohibicion alguna respecto a la importacion u esportacion de cualesquiera artículos del producto natural o manufacturado de los territorios de la República de la Nueva Granada para los de los Estados Unidos,o de los territorios de los Estados Unidos para los de la República de la Nueva Granada, que no sea igualmente estensiva a las otras naciones.

ARTICLE 6th

In order to prevent the possibility of any misunderstanding, it is hereby declared that the stipulations contained in the three preceding articles are to their full extent aplicable to the vessels of the United States and their cargoes arriving in the ports of New Granada, and reciprocally to the vessels of the said Republic of

ARTÍCULO 6º

A fin de remover la posibilidad de cualquiera mala intelijencia con respecto a los tres artículos anteriores, se declara aqui: que las estiputaciones contenidas en ellos son aplicables en toda su estension a los buques de la Nueva Granada i sus cargamentos que arriben a los puertos de los Estados Unidos, i recíprocamente a los

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New Granada and their cargoes arriving in the ports of the United States; whether they proceed from the ports of the country to which they respectively belong, or from the ports of any other foreign country; and in either case no discriminating duty shall be imposed or collected in the ports of either country on said vessels or their cargoes, whether the same shall be of native or foreign produce or manufacture.

buques de los Estados Unidos i sus cargamentos que arriben a los puertos de la Nueva Granada; sea que procedan de los puertos del país a que ellos pertenezcan respectivamente, o de los de cualquiera otro país estranjero; i que en ningun caso se impondrá o cobrará derecho alguno diferencial en los puertos de los dos países sobre los dichos buques o sus cargamentos, ya sean estos del producto o manufactura nacional o del producto o manufactura estranjera.

ARTICLE 7th

It is likewise agreed, that it shall be wholly free for all merchants, commanders of ships, and other citizens of both countries to manage by themselves or agents their own business in all the ports and places subject to the jurisdiction of each other, as well with respect to the consignments and sale of their goods and merchandize by whole sale or retail, as with respect to: the loading, unloading and sending off their ships; they being, in all these cases, to be treated as citizens of the country in which they reside, or at least to be placed on an equality with the subjects or citizens of the most favored nation.

ARTÍCULO 7º

Se conviene ademas, que será enteramente libre a los comerciantes, capitanes de buques, i otros ciudadanos de ambos países manejar a su voluntad sus negocios por si mismos, o por medio de sus ajentes, en todos los puertos i lugares sujetos a la jurisdiccion del uno u del otro, tanto con respecto a las consignaciones i ventas por mayor o menor de sus efectos i mercaderias, como con respecto a la carga, descarga i despacho de sus buques u otros negócios, debiendo en todos estos casos ser tratados como ciudadanos del país en que residan, o considerados al ménos bajo igual pié que los súbditos o ciudadanos de la nacion mas favorecida

ARTICLE 8th

The citizens of neither of the contracting parties shall be liable to any embargo, nor be detained

ARTÍCULO 8º

Los ciudadanos de una i otra de las partes contratantes no podrán ser embargados o detenidos con

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with their vessels, cargoes, merchandize or effects for any military expedition, nor for any public or private purpose whatever, without allowing to those interested an equitable and sufficient indemnification.

sus embarcaciones, tripulaciones, mercaderías i efectos comerciales de su pertenencia, para ninguna espedicion militar, ni para usos públicos o particulares, cualesquiera que sean, sin conceder a los interesados una justa i suficiente indemnizacion.

ARTICLE 9th

Whenever the citizens of either of the contracting parties shall be forced to seek refuge or assylum, in the rivers, bays, ports or dominions of the other with their vessels, whether merchant or of war, public or private, through stress of weather, pursuit of pirates or enemies, or want of provisions or water, they shall be received and treated with humanity, giving to them all favor and protection for repairing their ships, procuring provisions, and placing themselves in a situation to continue their voyage, without obstacle or hindrance of any kind or the payment of port fees or any charges other than pilotage, except such vessels continue in port longer than forty eight hours counting from the time they cast anchor in port.

ARTÍCULO 9º

Siempre que los ciudadanos de alguna de las partes contratantes se vieren precisados a buscar refujio u asilo, en los rios, bahias, puertos o dominios de la otra, con sus buques, sean mercantes o de guerra, públicos o particulares, por mal tiempo, persecucion de piratas o enemigos, o falta de aguada o provisiones, serán recibidos i tratados con humanidad, dispensándoles todo favor i proteccion para reparar sus buques, acopiar víveres i ponerse en situacion de continuar su viaje, sin obstáculo ni molestia de ningun jénero, ni pago de derechos de puerto o de cualesquiera otras cargas que los emolumentos del práctico, a no ser que los tales buques continúen en el puerto mas de cuarenta i ocho horas contadas desde el momento en que anclaren.

ARTICLE 10th

All the ships, merchandize and effects belonging to the citizens of one of the contracting parties, which may be captured by pirates, whether within the limits of its jurisdiction or on the high seas,

ARTÍCULO 10.

Todos los buques, mercaderías i efectos pertenecientes a los ciudadanos de la una de las partes contratantes, que acaso fueren apresados por piratas, bien sea dentro de los límites de su juris-

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and may be carried or found in the rivers, roads, bays, ports or dominions of the other, shall be delivered up to the owners, they proving in due and proper form their rights, before the competent tribunals: it being well understood that the claim shall be made within the term of one year by the parties themselves, their attorneys, or agents of their respective Governments.

ARTICLE 11th

When any vessels belonging to the citizens of either of the contracting parties shall be wrecked or foundered or shall suffer any damage on the coasts, or within the dominions of the other, there shall be given to them all assistance and protection, in the same manner which is usual and customary with the vessels of the nation where the damage happens: permitting them to unload the said vessel, if necessary, of its merchandize and effects, without exacting for it any duty, impost or contribution whatever, unless they may be destined for consumption or sale in the country of the port where they may have been disembarked.

ARTICLE 12th

The citizens of each of the contracting parties shall have power to dispose of their personal goods or real estate within the jurisdiction of the other, by sale, donadiccion o en alta mar, i fueren llevados o hallados en los rios, radas, bahías, puertos o dominios de la otra, serán entregados a sus dueños, probando estos en la forma propia i debida sus derechos ante los tribunales competentes; bien entendido que el reclamo ha de hacerse dentro del término de un año, por las mismas partes o por sus procuradores, o por los ajentes de sus respectivos Gobiernos.

ARTÍCULO 11.

Cuando algun buque perteneciente a los ciudadanos de cualquiera de las partes contratantes naufrague, encalle, o sufra alguna avería en las costas, o dentro de los dominios de la otra, se le dará toda ayuda i proteccion; del propio modo que es uso i costumbre con los buques de la nacion en donde suceda la avería; permitiéndose descargar el dicho buque si fuere necesario, de sus mercaderías i efectos, sin exijir por esto ningun derecho, impuesto o contribucion de ninguna espécie, a no ser que se destinen a la venta o consumo en el país en en cuyo puerto se hubieren desembarcado.

ARTÍCULO 12.

Los ciudadanos de cada una de las partes contratantes tendrán facultad para disponer de sus bienes muebles e inmuebles dentro de la jurisdiccion de la otra, por

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tion, testament, or otherwise, and their representatives being citizens of the other party, shall succeed to their said personal goods or real estate, whether by testament or *ab intestato*, and they may take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country, wherein said goods are, shall be subject to pay in like cases.

venta, donacion, testamento o de otro modo; i sus representantes, siendo ciudadanos de la otra parte, sucederán a sus dichos bienes muebles e inmuebles sea por testamento, o *ab intestato*, i podrán tomar posesion de ellos, por si personalmente, o por medio de otros que procedan en su nombre, i disponer de los mismos a su arbitrio, pagando solo aquellas cargas que en iguales casos estuvieren obligados a pagar los habitantes del país en donde esten los referidos bienes.

ARTICLE 13th

Both contracting parties promise and engage formally to give their special protection to the persons and property of the citizens of each other, of all occupations, who may be in the territories subject to the jurisdiction of one or the other, transient or dwelling therein, leaving open and free to them the tribunals of justice for their judicial recourse, on the same terms which are usual and customary with the natives or citizens of the country; for which purpose they may either appear in proper person or employ in the prosecution or defense of their rights such advocates, solicitors, notaries, agents and factors as they may judge proper in all their trials at law; and such citizens or agents shall have free opportunity to be present at the decisions or sentences of the tribunals, in all

ARTÍCULO 13.

Ambas partes contratantes se comprometen i obligan en toda forma a dispensar recíprocamente su proteccion especial a las personas i propiedades de los ciudadanos de cada una de ellas, de todas profesiones, transeuntes o habitantes en los territorios sujetos a la jurisdiccion de una i otra, dejándoles abiertos i libres los tribunales de justicia para sus recursos judiciales, en los mismos términos usados i acostumbrados para los naturales o ciudadanos del país; para lo cual podrán jestionar en persona, o emplear en la jestion o defensa de sus derechos a los abogados, procuradores, escribanos, ajentes u apoderados que juzguen convenientes para todos sus litíjios; i dichos ciudadanos o ajentes tendrán la libre facultad de estar presentes en las decisiones i sentencias de los tribunales en todos

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cases which may concern them, and likewise at the taking of all examinations and evidence which may be exhibited in the said trials.

ARTICLE 14th

The citizens of the United States residing in the territories of the Republic of New Granada, shall enjoy the most perfect and entire security of conscience without being annoyed, prevented, or disturbed on account of their religious belief. Neither shall they be annoyed, molested or disturbed on the proper exercise of their religion in private houses or on the Chapels or places of worship appointed for that purpose, provided that in so doing they observe the decorum due to divine worship, and the respect due to the laws, usages and customs of the country. Liberty shall also be granted to bury the citizens of the United States who may die in the territories of the Republic of New Granada in convenient and adequate places to be appointed and established by themselves for that purpose, with the knowledge of the local authorities, or in such other places of sepulture as may be chosen by the friends of the deceased; nor shall the funerals or sepulchres of the dead be disturbed in any wise nor upon any account.

In like manner the citicens of New Granada shall enjoy, within the Government and territories of

los casos que les conciernan; como igualmente al tomarse todas las declaraciones i pruebas que se ofrezcan en los dichos litíjios.

ARTÍCULO 14.

Los ciudadanos de la República de Nueva Granada residentes en territorio de los Estados Unidos gozarán una perfecta e ilimitada libertad de conciencia, sin ser molestados, inquietados ni perturbados por su creencia relijiosa. No serán molestados, inquietados ni perturbados en el ejercicio de su relijion en casas privadas o en las capillas o lugares de adoracion designados al efecto, con el decoro debido a la divinidad, i respeto a las leyes, usos i costumbres del país. Tambien tendrán libertad para enterrar los ciudadanos de Nueva Granada que mueran en territorio de los Estados Unidos, en los lugares convenientes i adecuados, designados i establecidos por ellos con acuerdo de las autoridades locales, o en los lugares de sepultura que elijan los amigos de los muertos; i los funerales i sepulcros no serán trastornados de modo alguno ni por ningun motivo.

De la misma manera los ciudadanos de los Estados Unidos gozarán en territorio de la República

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the United States, a perfect and unrestrained liberty of conscience and of exercising their religion, publicly or privately, within their own dwelling houses, or on the chapels and places of worship appointed for that purpose, agreeably to the laws, usages & customs of the United States.

de Nueva Granada perfecta e ilimitada libertad de conciencia, i ejercerán su relijion pública o privadamente en sus mismas habitaciones, o en las capillas o lugares de adoracion designados al efecto de conformidad con las leyes, usos i costumbres de la República de Nueva Granada.

ARTICLE 15th

It shall be lawful for the citizens of the United States of America and of the Republic of New Granada to sail with their ships, with all manner of liberty and security, no distinction being made who are the proprietors of the merchandize laden thereon, from any port to the places of those who now are or hereafter shall be at enmity with either of the contracting parties. It shall likewise be lawful for the citizens aforesaid to sail with the ships and merchandize before mentioned and to trade with the same liberty and security from the places, ports and havens of those who are enemies of both or either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy before mentioned to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of one power or under several. And it is hereby stipulated that free ships shall also give

ARTÍCULO 15.

Será lícito a los ciudadanos de la República de la Nueva Granada, i de los Estados Unidos de América, navegar con sus buques con toda seguridad i libertad, de cualquier puerto a las plazas i lugares de los que son o fueren en adelante enemigos de cualquiera de las dos partes contratantes, sin hacerse distincion de quienes son los dueños de las mercaderías que llevan a su bordo. Será igualmente lícito a los referidos ciudadanos navegar con sus buques i mercaderías mencionadas, i traficar con la misma libertad i seguridad, de los lugares, puertos i ensenadas de los enemigos de ambas partes o de alguna de ellas, sin oposicion o molestia de ninguna espécie, no solo directamente de los lugares enemigos arriba mencionados a los lugares neutros, sino tambien de un lugar perteneciente a un enemigo, a otro enemigo, ya sea que esten bajo la jurisdiccion de una sola potencia, o bajo la de diversas. I queda aquí estipulado que los buques libres hacen libres tam-

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freedom to goods, and that every thing which shall be found on board the ships belonging to the citizens of either of the contracting parties, shall be deemed to be free and exempt, although the whole lading or any part thereof should appertain to the enemies of either (contraband goods being always excepted.) It is also agreed in like manner, that the same liberty shall be extended to persons who are on board a free ship, with this effect, that although they be enemies to both or either party, they are not to be taken out of that free ship, unless they are officers and soldiers, and in the actual service of the enemies: provided however, and it is hereby agreed, that the stipulations in this article contained, declaring that the flag shall cover the property, shall be understood as applying to those powers only, who recognize this principle, but if either of the two contracting parties shall be at war with a third, and the other remains neutral, the flag of the neutral shall cover the property of enemies whose Governments acknowledge this principle and not of others.

bien a las mercaderías, i que se ha de considerar libre i exento todo lo que se hallare a bordo de los buques pertenecientes a los ciudadanos de cualquiera de las partes contratantes, aunque toda la carga o parte de ella pertenezca a enemigos de una u otra, esceptuados siempre los artículos de contrabando. Se conviene tambien del mismo modo, en que la misma libertad sea estensiva a las personas que se encuentren a bordo de buques libres, con el fin de que aunque dichas personas sean enemigos de ambas partes o de alguna de ellas, no deban ser estraídas de los dichos buques libres, a ménos que sean oficiales o soldados en actual servicio de los enemigos: a condicion no obstante, como espresamente se conviene, que las estipulaciones contenidas en el presente artículo, por las que se declara que el pabellon cubre la propiedad, se entenderán aplicables solamente a aquellas potencias que reconozcan este principio; pero si alguna de las dos partes contratantes estuviere en guerra con una tercera, i la otra permaneciere neutral, la bandera de la neutral cubrirá la propiedad de los enemigos, cuyos Gobiernos reconozcan este principio, i no de otros.

ARTICLE 16th

It is likewise agreed, that in the case where the neutral flag of one

ARTÍCULO 16.

Se conviene igualmente, que en el caso de que la bandera neutral

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of the contracting parties shall protect the property of the enemies of the other, by virtue of the above stipulation, it shall always be understood that the neutral property found on board such enemy's vessels, shall be held and considered as enemy's property, and as such shall be liable to detention and confiscation, except such property as was put on board such vessel before the declaration of war, or even afterwards, if it were done without the knowledge of it; but the contracting parties agree that two months having elapsed after the declaration of war, their citizens shall not plead ignorance thereof. On the contrary, if the flag of the neutral does not protect the enemy's property, in that case, the goods and merchandize of the neutral embarked on such enemy's ship shall be free.

de una de las partes contratantes proteja las propiedades de los enemigos de la otra, en virtud de lo estipulado arriba, deberá siempre entenderse que las propiedades neutrales encontradas a bordo de tales buques enemigos, han de tenerse i considerarse como propiedades enemigas, i como tales estarán sujetas a detencion i confiscacion, esceptuando aquellas propiedades que hubiesen sido puestas a bordo de tales buques antes de la declaratoria de la guerra, i aún despues, si hubiesen sido embarcadas en dichos buques sin tener noticia de ella; pero las partes contratantes convienen en que, pasados dos meses despues de la declaratoria de la guerra, sus respectivos ciudadanos no podrán alegar que la ignoraban. Por el contrario, si la bandera neutral no protejiere las propiedades enemigas, entónces serán libres los efectos i mercaderías de la parte neutral embarcadas en buques enemigos.

ARTICLE 17th

This liberty of navigation and commerce shall extend to all kinds of merchandize, excepting those only which are distinguished by the name of *contraband;* and under this name of *contraband*, or prohibited goods, shall be comprehended.

1st Cannons, mortars, howitzers, swivels, blunderbusses, muskets, rifles, carbines, pistols, pikes,

ARTÍCULO 17.

Esta libertad de navegacion i comercio se estenderá a todo jénero de mercaderías; esceptuando únicamente aquellas que se distinguen con el nombre de *contrabando:* i bajo este nombre de *contrabando* u efectos prohibidos se comprenderán.

1º Cañones, morteros, obuces, pedreros, trabucos, fusiles, rifles, carabinas, pistolas, picas, espadas,

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swords, sabres, lances, spears, halberts; and granades, bombs, powder, matches, balls, and all other things belonging to the use of these arms.

2nd Bucklers, helmets, breast plates, coats of mail, infantry belts, and clothes made up in the form and for the military use.

3d Cavalry belts, and horses with their furniture.

4th And generally all kind of arms and instruments of iron, steel, brass, and copper, or of any other materials manufactured, prepared and formed, expressly to make war by sea or land.

5th Provisions that are imported into a besieged or blockaded place.

sables, lanzas, chuzos, alabardas; i granadas, bombas, pólvora, mechas, balas, con todas las demas cosas correspondientes al uso de estas armas.

2º Escudos, casquetes, corazas, cotas de malla, fornituras i vestidos hechos en forma i a usanza militar.

3º Bandoleras i caballos con sus arneses.

4º I jeneralmente toda espécie de armas e instrumentos de hierro, acero, bronce, cobre, i otras materias cualesquiera manufacturadas, preparadas i formadas espresamente para hacer la guerra por mar o por tierra.

5º Los víveres que se introducen a una plaza sitiada o bloqueada.

ARTICLE 18th

All other merchandize and things not comprehended in the articles of contraband, explicitly enumerated and classified as above, shall be held and considered as free, and subjects of free and lawful commerce, so that they may be carried and transported in the freest manner by the citizens of both the contracting parties, even to places belonging to an enemy, excepting those places only which are at that time besieged or blockaded; and to avoid all doubt in this particular, it is declared, that those places only are besieged, or blockaded, which are actually at-

ARTÍCULO 18.

Todas las demas mercaderías i efectos no comprendidos en los artículos de contrabando esplícitamente enumerados i clasificados en el artículo anterior, serán tenidos i reputados como libres i de lícito i lejítimo comercio; de modo que podrán ser conducidos i trasportados de la manera mas franca, por los ciudadanos de ambas partes contratantes, aún a los lugares pertenecientes a enemigo, esceptuando solo aquellas plazas que se hallen actualmente sitiadas o bloqueadas: i para evitar en el particular toda duda, se declaran sitiadas o bloqueadas solamente

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tacked by a belligerant force capable of preventing the entry of the neutral.

ARTICLE 19th

The articles of contraband, before enumerated and classified, which may be found in a vessel bound for an enemy's port, shall be subject to detention and confiscation, leaving free the rest of the cargo and the ship, that the owners may dispose of them as they see proper. No vessel of either of the two nations shall be detained on the high seas on account of having on board articles of contraband, whenever the master, captain or supercargo of said vessels will deliver up the articles of contraband to the captor, unless the quantity of such articles be so great and of so large a bulk, that they cannot be received on board the capturing ship without great inconvenience; but in this and all other cases of just detention, the vessel detained shall be sent to the nearest convenient and safe port, for trial and judgment according to law.

ARTICLE 20th

And whereas it frequently happens, that vessels sail for a port or place belonging to an enemy, without knowing that the same is besieged or blockaded or in-

aquellas plazas que en la actualidad estuvieren atacadas por una fuerza de un belijerante capaz de impedir la entrada del neutral.

ARTÍCULO 19.

Los artículos de contrabando antes enumerados i clasificados, que se hallen en un buque destinado a puerto enemigo, estarán sujetos a detencion i confiscacion, dejando libre el resto del cargamento i el buque, para que los dueños puedan disponer de ellos como lo tengan por conveniente. Ningun buque de cualquiera de las dos naciones será detenido en alta mar por tener a su bordo artículos de contrabando, siempre que el maestre, capitan o sobrecargo de dicho buque quiera entregar los artículos de contrabando al apresador, a ménos que la cantidad de dichos artículos sea tan grande i de tanto volúmen que no puedan ser recibidos a bordo del buque apresador sin graves inconvenientes; pero en este, i en todos los demas casos de justa detencion, el buque detenido será enviado al puerto mas inmediato, cómodo, i seguro para que allí se siga el juicio i se dicte sentencia conforme a las leyes.

ARTÍCULO 20.

I por cuanto frecuentemente sucede que los buques navegan para un puerto o lugar perteneciente a un enemigo, sin saber que se halle sitiado, bloqueado o

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vested, it is agreed that every vessel so circumstancied may be turned away from such port or place, but shall not be detained, nor shall any part of her cargo, if not contraband, be confiscated, unless, after warning of such blockade or investment, from the commanding officer of the blockading forces, she shall again attempt to enter; but she shall be permitted to go to any other port or place she shall think proper. Nor shall any vessel that may have entered into such port before the same was actually besieged, blockaded or invested by the other, be restrained from quitting that place with her cargo, nor if found therein, after the reduction and surrender, shall such vessel or her cargo be liable to confiscation, but they shall be restored to the owners thereof.

ARTICLE 21st

In order to prevent all kind of disorder in the visiting and examination of the ships and cargoes of both the contracting parties on the high seas, they have agreed mutually, that whenever a national vessel of war, public or private, shall meet with a neutral of the other contracting party, the first shall remain out of cannon shot, unless in stress of weather, and may send its boat with two or three men only, in order to execute the said examination of the papers con-

embestido, se conviene en que a todo buque, en tales circunstancias, se le pueda hacer retroceder de dicho puerto o lugar; pero no será detenido ni confiscada parte alguna de su cargamento, no siendo contrabando; a ménos que, despues de la intimacion de semejante bloqueo o embestimiento por el comandante de las fuerzas bloqueadoras, intentare otra vez entrar; pero le será permitido ir a cualquiera otro puerto o lugar a donde lo tuviere por conveniente. Ni a buque alguno que hubiere entrado en un puerto antes de que estuviere sitiado, bloqueado u embestido, se le impedirá salir de él con su cargamento; ni siendo hallado allí despues de la rendicion i entrega del lugar, estarán sujetos a confiscacion el tal buque o su cargamento, sino que serán restituidos a sus dueños.

ARTÍCULO 21.

Con el objeto de prevenir todo jénero de desórden en la visita i reconocimiento de los buques i cargamentos de ambas partes contratantes en alta mar, han convenido mutuamente, que siempre que un buque nacional de guerra, se encontrare con un neutral de la otra parte contratante, el primero permanecerá fuera del tiro de cañon, salvo en caso de mala mar, i podrá enviar su bote, con dos o tres hombres solamente, para verificar el dicho reconocimiento de

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cerning the ownership and cargo of the vessel, without causing the least extortion, violence or ill treatment, for which the commanders of said armed ships shall be responsible with their persons and property; for which purpose the commanders of private armed vessels shall, before receiving their commissions, give sufficient security to answer for all the damages they may commit. And it is expressly agreed, that the neutral party shall in no case be required to go on board the examining vessel, for the purpose of exhibiting her papers, or for any other purpose whatever.

ARTICLE 22nd

To avoid all kind of vexation and abuse in the examination of the papers relating to the ownership of the vessels belonging to the citizens of the two contracting parties, they have agreed, and do hereby agree, that in case one of them should be engaged in war, the ships and vessels belonging to the citizens of the other must be furnished with sea letters or passports, expressing the name, property and bulk of the ship, as also the name and place of habitation of the master and commander of the said vessel, in order that it may thereby appear, that the ship really and truly belongs to the citizens of one of the parties; they have likewise agreed, that

los papeles concernientes a la propiedad i carga del buque, sin ocasionarle la menor estorsion, violencia o mal trato; sobre lo cual serán responsables con sus personas i bienes los comandantes del dicho buque armado. Para este fin los comandantes de buques, armados por cuenta de particulares, estarán obligados antes de recibir sus patentes, a dar fianza suficiente para responder de los perjuicios que puedan causar. I se ha convenido espresamente que en ningun caso se exijirá de la parte neutral, que vaya a bordo del buque reconocedor con el fin de exibir sus papeles, o para cualquiera otro objeto.

ARTÍCULO 22.

Para evitar toda clase de vejámen i abuso en el escrutinio de los papeles relativos a la propiedad de los buques pertenecientes a los ciudadanos de las dos partes contratantes, estas han convenido i convienen, que en caso de que una de ellas estuviere en guerra, los buques i bajeles pertenecientes a los ciudadanos de la otra deberán proveerse con patentes de navegacion o pasaportes en que se espresen el nombre, propiedad i capazidad del buque, como tambien el nombre i el lugar de la residencia del maestre o comandante, a fin de que se vea que el buque pertenece real i verdaderamente a los ciudadanos de una de las par-

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when such ships have a cargo, they shall also be provided, besides the said sea letters or passports, with certificates containing the several particulars of the cargo, and the place whence the ship sailed, so that it may be known, whether any forbidden or contraband goods are on board the same, which certificates shall be made out by the officers of the place whence the ship sailed, in the accustomed form, without which requisites, said vessel may be detained, to be adjudged by the competent tribunal, and may be declared lawful prize, unless the said defect shall be proved to be owing to accident and shall be satisfied or supplied by testimony entirely equivalent.

ARTICLE 23d

It is further agreed, that the stipulations above expressed, relative to the visiting and examination of vessels, shall apply only to those which sail without convoy, and when said vessels shall be under convoy, the verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag he carries, and when they may be bound to an enemy's port, that they have no contraband goods on board, shall be sufficient.

tes; i han convenido igualmente que, estando cargados los espresados buques, ademas de las patentes de navegacion o pasaportes, irán tambien provistos de certificados, que contengan los pormenores del cargamento, i el lugar de donde se hizo a la vela el buque, para que asi pueda saberse si hai a su bordo algunos efectos prohibidos o de contrabando, cuyos certificados serán espedidos en la forma acostumbrada por los empleados del lugar de la procedencia del buque, sin cuyos requisitos el dicho buque podrá ser detenido para que se le juzgue por el tribunal competente, i podrá ser declarado buena presa, a ménos que se pruebe que el defecto proviene de algun accidente, i se satisfaga o subsane con testimonios del todo equivalentes.

ARTÍCULO 23.

Se ha convenido ademas que las estipulaciones anteriores relativas al reconocimiento i visita de los buques, se aplicarán únicamente a los que naveguen sin convoi, i que cuando los dichos buques estuvieren bajo de convoi, será suficiente la declaracion verbal del comandante de este, bajo su palabra de honor, de que los buques que se hallan bajo su proteccion pertenecen a la nacion cuya bandera llevan; i cuando se dirijan a un puerto enemigo, que los dichos buques no tienen a su bordo artículos de contrabando.

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ARTICLE 24th

It is further agreed, that, in all cases, the established courts for prize causes, in the country to which the prizes may be conducted, shall alone take cognizance of them. And whenever such tribunals of either party shall pronounce judgment against any vessel or goods or property claimed by the citizens of the other party, the sentence or decree shall mention the reasons or motives upon which the same shall have been founded, and an authenticated copy of the sentence or decree and of all the proceedings in the case, shall, if demanded, be delivered to the commander or agent of said vessel, without any delay, he paying the legal fees for the same.

ARTÍCULO 24.

Se ha convenido ademas, que en todos los casos que ocurran, solo los tribunales establecidos para causas de presas en el país a que las presas sean conducidas, tomarán conocimiento de ellas. I siempre que tales tribunales de una de las partes, pronunciaren sentencia contra algun buque, o efectos o propiedad reclamada por los ciudadanos de la otra, la sentencia o decreto hará mencion de las razones o motivos en que aquella se hubiere fundado, i se franqueará sin retardo alguno al comandante o ajente de dicho buque, si lo solicitare, un testimonio auténtico de la sentencia o decreto, o de todo el proceso, satisfaciendo por él los derechos legales.

ARTICLE 25th

For the purpose of lessening the evils of war, the two high contracting parties, farther agree that, in case a war should unfortunately take place between them, hostilities shall only be carried on by persons duly commissioned by the Government, and by those under their orders, except in repelling an attack or invasion, and in the defense of property.

ARTÍCULO 25.

Con el fin de disminuir los males de la guerra, las dos altas partes contratantes, convienen ademas: que en caso de suscitarse desgraciadamente una guerra entre ellas, solo se lleverán a efecto las hostilidades por aquellas personas debidamente autorizadas por el Gobierno, i por las que esten bajo sus órdenes; esceptuados los casos de repeler un ataque o invasion, i en la defensa de la propiedad.

ARTICLE 26th

Whenever one of the contracting parties shall be engaged in war with another State, no citizen

ARTÍCULO 26.

Siempre que una de las partes contratantes estuviere empeñada en guerra con otro Estado, ningun

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of the other contracting party shall accept a commission or letter of marque, for the purpose of assisting or cooperating hostilely with the said enemy against the said parties so at war, under the pain of being treated as a pirate.

ciudadano de la otra parte contratante aceptará comision o patente de corso para el objeto de ausiliar, o cooperar hostilmente con el dicho enemigo contra la mencionada parte que esté en guerra, bajo la pena de ser tratado como pirata.

ARTICLE 27th

If by any fatality which cannot be expected, and God forbid, the two contracting parties should be engaged in a war with each other, they have agreed and do agree now for then, that there shall be allowed the term of six months to the merchants residing on the coasts and in the ports of each other, and the term of one year to those who dwell in the interior, to arrange their business and transport their effects wherever they please, giving to them the safeconduct necessary for it, which may serve as a sufficient protection until they arrive at the designated port. The citizens of all other occupations, who may be established in the territories or dominions of the United States or of New Granada, shall be respected, and maintained in the full enjoyment of their personal liberty and property, unless their particular conduct, shall cause them to forfit this protection, which in consideration of humanity, the contracting parties engage to give them.

ARTÍCULO 27.

Si por alguna fatalidad, que no puede esperarse, i que Dios no permita, las dos partes contratantes se viesen empeñadas en guerra una con otra, han convenido i convienen desde ahora para entónces, que se concederá el término de seis meses a los comerciantes residentes en las costas i i en los puertos de entrambas, i el término de un año a los que habitan en el interior para arreglar sus negocios i trasportar sus efectos a donde quieran, dándoles el salvoconducto necesario que les sirva de suficiente proteccion hasta que lleguen al puerto designado. Los ciudadanos dedicados a cualesquiera otras ocupaciones, que se hallaren establecidos en los territorios o dominios de la Nueva Granada o de los Estados Unidos, serán respetados i mantenidos en el pleno goze de su libertad personal i de sus propiedades, a ménos que su particular conducta les haga desmerecer esta proteccion que las partes contratantes se comprometen a prestarles por consideraciones de humanidad.

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ARTICLE 28th

Neither the debts due from individuals of the one nation to the individuals of the other, nor shares, nor money which they may have in public funds, nor in public or private banks, shall ever in any event of war or of national difference be sequestered or confiscated.

ARTÍCULO 28.

Ni las deudas contraidas por los individuos de la una nacion en favor de los individuos de la otra, ni las acciones o cantidades que puedan tener en los fondos públicos, o en los bancos públicos o particulares serán jamas confiscadas o secuestradas en ningun caso de guerra o desavenencia nacional.

ARTICLE 29th

Both the contracting parties being desirous of avoiding all inequality, in relation to their public communications and official intercourse, have agreed and do agree to grant to the envoys, ministers, and other public agents, the same favors, immunities and exemptions, which those of the most favored nations do or shall enjoy, it being understood that, whatever favors, immunities or privileges, the United States of America or the Republic of New Granada may find it proper to give to the ministers and public agents of any other power, shall, by the same act, be extended to those of each of the contracting parties.

ARTÍCULO 29.

Deseando ambas partes contratantes evitar toda desigualdad en lo relativo a sus comunicaciones públicas i su correspondencia oficial, han convenido i convienen en conceder a sus Enviados, Ministros i ajentes públicos los mismos favores, inmunidades i exenciones que gozan o gozaren los de las naciones mas favorecidas: bien entendido que cualesquiera favores, inmunidades o privilejios que la Nueva Granada o los Estados Unidos tengan por conveniente otorgar a los Enviados, Ministros i ajentes diplomáticos de otras potencias se harán por el mismo hecho estensivos a los de una i otra de las partes contratantes.

ARTICLE 30th

To make mor effectual the protection which the United States and the Republic of New Granada shall afford in future to the navigation and commerce of the citizens of each other, they agree to receive and admit Consuls and

ARTÍCULO 30.

Para hacer mas efectiva la proteccion que la Nueva Granada i los Estados Unidos de América dispensarán en adelante a la navegacion i comercio de los ciudadanos de una i otra, convienen en recibir i admitir Cónsules i Vice-

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Viceconsuls, in all the ports open to foreign commerce, who shall enjoy in them all the rights, prerogatives and immunities of the Consuls and Viceconsuls of the most favored nation, each contracting party, however, remaining at liberty to except those ports and places in which the admission and residence of such Consuls may not seem convenient.

ARTICLE 31st

In order that the Consuls and Viceconsuls of the two contracting parties may enjoy the rights, prerogatives and immunities which belong to them, by their public character, they shall, before entering on the exercise of their functions, exhibit their commission, or patent, in due form, to the Government to which they are accreditted, and having obtained their *Exequatur*, they shall be held and considered as such by all the authorities, magistrates and inhabitants in the consular district in which they reside.

ARTICLE 32d

It is likewise agreed that the Consuls, their Secretaries, officers and persons attached to the service of Consuls, they not being citizens of the country in which the Consul resides, shall be exempt from all public service, and also from all kind of taxes,

cónsules en todos los puertos abiertos al comercio estranjero, quienes gozarán en ellos de todos los derechos, prerogativas e inmunidades de los Cónsules i Vicecónsules de la nacion mas favorecida; quedando no obstante en libertad cada una de las partes contratantes para esceptuar aquellos puertos i lugares en que la admision i residencia de tales Cónsules pueda no parecer conveniente.

ARTÍCULO 31.

Para que los Cónsules i Vicecónsules de las dos partes contratantes puedan gozar de los derechos, prerogativas e inmunidades que les corresponden por su carácter público, antes de entrar en el ejercicio de sus funciones, presentarán su comision o patente en la forma debida, al Gobierno respecto del cual esten acreditados, i habiendo obtenido su *exequatur*, serán reputados i considerados como tales por todas las autoridades, majistrados i habitantes del distrito consular en que residan.

ARTÍCULO 32.

Se ha convenido igualmente que los Cónsules, sus Secretarios, oficiales, i personas agregadas al servicio de los Consulados (no siendo estas personas ciudadanos del país en donde el Cónsul reside) estarán exentas de todo servicio publico, i tambien de toda espécie

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imposts and contributions, except those which they shall be obliged to pay on account of commerce or their property, to which the citizens and inhabitants native and foreign of the country in which they reside are subject, being in every thing besides subject to the laws of the respective States. The archives and papers of the Consulates shall be respected inviolably, and under no pretext, whatever, shall any magistrate seize, or, in any way, interfere with them.

de pechos, impuestos i contribuciones, esceptuando aquellas que esten obligados a pagar por razon de comercio u propiedad, i a las cuales estan sujetos los ciudadanos i habitantes naturales i estranjeros en el país en que residen, quedando en todo lo demas sometidos a las leyes de los respectivos Estados. Los archivos i papeles de los Consulados, serán respetados inviolablemente, i bajo ningun pretesto los ocupará majistrado alguno, ni tendrán en ellos ninguna intervencion.

ARTICLE 33d

The said Consuls shall have power to require the assistance of the authorities of the country, for the arrest, detention and custody of deserters from the public and private vessels of their country, and for that purpose they shall address themselves, to the courts, judges, and officers competent, and shall demand in writing the said deserters, proving by an exhibition of the registers of the vessel's or ship's roll, or other public documents, that those men were part of the said crews; and on this demand so proved (saving however where the contrary is proved by other testimonies) the delivery shall not be refused: Such deserters, when arrested, shall be put at the disposal of the said Consuls, and may be put in the public prisons, at the request and expense of those who reclaim them,

ARTÍCULO 33.

Los dichos Cónsules tendrán facultad para requerir el ausilio de las autoridades locales para la prision, detencion i custodia de los desertores de buques, públicos i particulares, de su respectivo pais; i con este objeto se dirijirán a los tribunales, jueces i empleados competentes, i reclamarán por escrito los dichos desertores, probando con la presentacion de los rejistros de los buques, del rol de la tripulacion i de otros documentos públicos, que aquellos hombres hacían parte de las dichas tripulaciones: i a virtud de esta demanda, asi probada (esceptuando no obstante el caso en que se probare por otros testimonios lo contrario) no se rehusará la entrega. Aprehendidos dichos desertores, serán puestos a disposicion de los mencionados Cónsules, i podrán ser depositados en las

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to be sent to the ships to which they belonged, or to others of the same nation. But if they be not sent back within two months, to be counted from the day of their arrest, they shall be set at liberty, and shall be no more arrested for the same cause.

ARTICLE 34th

For the purpose of more effectually protecting their commerce and navigation, the two contracting parties do hereby agree to form as soon hereafter as circumstances will permit, a consular convention, which shall declare specially the powers and immunities of the Consuls and Viceconsuls of the respective parties.

ARTICLE 35th

The United States of America and the Republic of New Granada desiring to make as durable as possible, the relations which are to be established between the two parties by virtue of this treaty, have declared solemnly, ando do agree to the following points.

1st For the better understanding of the preceding articles, it is, and has been stipulated, between the high contracting parties, that the citizens, vessels and merchandize of the United States shall enjoy in the ports of New Granada, including those of the part of the granadian territory generally de-

cárceles públicas a solicitud i a espensas de los que los reclamen para ser enviados a los buques a que correspondian, o a otros de la misma nacion. Pero si no fueren remitidos dentro de dos meses, contados desde el dia de su arresto, serán puestos en libertad, i no volverán a ser presos por la misma causa.

ARTÍCULO 34.

Con el objeto de protejer mas eficazmente su comercio i navegacion, las dos partes contratantes convienen aquí en formar, luego que las circunstancias lo permitan, una convencion consular que declare mas especialmente las atribuciones e inmunidades de los Cónsules i Vicecónsules de las partes respectivas.

ARTÍCULO 35.

La República de la Nueva Granada i los Estados Unidos de América, deseando hacer tan duraderas cuanto sea posible las relaciones que han de establecerse entre las dos partes en virtud del presente tratado, han declarado solemnemente i convienen en los puntes siguientes:

1º Para mejor intelijencia de los artículos precedentes han estipulado i estipulan las altas partes contratantes: que los ciudadanos, buques i mercancias de los Estados Unidos disfrutarán en los puertos de la Nueva Granada, inclusos los de la parte del territorio granadino jeneralmente denominado

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nominated *Isthmus of Panamá* from its southernmost extremity until the boundary of Costa Rica, all the exemptions, privileges and immunities, concerning commerce and navigation, which are now, or may hereafter be enjoyed by Granadian citizens, their vessels and merchandize; and that this equality of favours shall be made to extend to the passengers, correspondence and merchandize of the United States in their transit across the said territory, from one sea to the other. The Government of New Granada guarantees to the Government of the United States, that the right of way or transit across the *Isthmus of Panamá*, upon any modes of communication that now exist, or that may be, hereafter, constructed, shall be open and free to the Government and citizens of the United States, and for the transportation of any articles of produce, manufactures or merchandize, of lawful commerce, belonging to the citizens of the United States; that no other tolls or charges shall be levied or collected upon the citizens of the United States, or their said merchandize thus passing over any road or canal that may be made by the Government of New Granada, or by the authority of the same, than is under like circumstances levied upon and collected from the granadian citizens: that any lawful produce, manufactures

Istmo de Panamá, desde su arranque en el estremo del Sud hasta la frontera de Costa-Rica, todas las franquicias, privilejios e inmunidades, en lo relativo a comercio i navegacion, de que ahora gozen i en lo sucesivo gozaren los ciudadanos granadinos, sus buques i mercancías; i que esta igualdad de favores se hará estensiva a los pasajeros, correspondencia i mercancías de los Estados Unidos que transiten al traves de dicho territorio de un mar a otro. El Gobierno de la Nueva Granada garantiza al Gobierno de los Estados Unidos, que el derecho de via o tránsito al traves del *Istmo de Panamá*, por cualesquiera medios de comunicacion que ahora existan o en lo sucesivo puedan abrirse estará franco i espedito para los ciudadanos i el Gobierno de los Estados Unidos i para el trasporte de cualesquiera artículos de productos, manufacturas o mercancías de lícito comercio, pertenecientes a ciudadanos de los Estados Unidos: que no se impondrán ni cobrarán a los ciudadanos de los Estados Unidos, ni a sus mercancias de lícito comercio, otras cargas o peajes, a su paso por cualquier camino o canal que pueda hacerse por el Gobierno de la Nueva Granada o con su autoridad, sino los que en semejantes circunstancias se impongan o cobren a los ciudadanos granadinos: que cualesquiera de estos productos, manufacturas o mercancías pertenecien-

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or merchandize belonging to citizens of the United States thus passing from one sea to the other, in either direction, for the purpose of exportation to any other foreign country, shall not be liable to any import duties whatever; or having paid such duties, they shall be entitled to drawback, upon their exportation: nor shall the citizens of the United States be liable to any duties, tolls, or charges of any kind to which native citizens are not subjected for thus passing the said Isthmus. And, in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages and for the favours they have acquired by the 4th, 5th and 6th articles of this Treaty, the United States guarantee positively and efficaciously to New Granada, by the present stipulation, the perfect neutrality of the before mentioned Isthmus, with the view that the free transit from the one to the other sea, may not be interrupted or embarassed in any future time while this Treaty exists; and in consequence, the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.

2d The present Treaty shall remain in full force and vigor for the term of twenty years, from the day of the exchange of the

tes a ciudadanos de los Estados Unidos, que pasen en cualquier direccion de un mar al otro, con el objeto de esportarse a cualquier otro país estranjero, no estarán sujetas a derecho alguno de importacion; i si lo hubieren pagado deberá reembolzarse al verificarse la esportacion: i que los ciudadanos de los Estados Unidos, al pasar asi por el dicho Istmo, no estarán sujetos a otros derechos, peajes, o impuestos, de cualquier clase, sino aquellos a que estuvieren sujetos los ciudadanos naturales. Para seguridad del goze tranquilo i constante de estas ventajas, i en especial compensacion de ellas i de los favores adquiridos segun los artículos 4º, 5º i 6º de este tratado, los Estados Unidos garantizan positiva i eficazmente a la Nueva Granada por la presente estipulacion, la perfecta neutralidad del ya mencionado Istmo, con la mira de que en ningun tiempo, existiendo este tratado, sea interrumpido ni embarazado el libre tránsito de uno a otro mar; i por consiguiente garantizan de la misma manera los derechos de soberanía i propiedad que la Nueva Granada tiene i posee sobre dicho territorio.

2º El presente tratado permanecerá en plena fuerza i vigor por el término de veinte años, contados desde el dia del canje de las ratifi-

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ratifications; and, from the same day, the treaty[1] that was concluded between the United States and Colombia on the 13th of October 1824, shall cease to have effect, notwithstanding what was disposed in the 1st point of its 31st article.

3rd Notwithstanding the foregoing, if neither party notifies to the other its intention of reforming any of, or all, the articles of this treaty twelve months before the expiration of the twenty years, stipulated above, the said treaty shall continue binding on both parties, beyond the said twenty years, until twelve months from the time that one of the parties notifies its intention of proceeding to a reform.

4th If any one or more of the citizens of either party shall infringe any of the articles of this treaty, such citizens shall be held personally responsible for the same, and the harmony and good correspondence between the nations shall not be interrupted thereby; each party engaging in no way to protect the offender, or sanction such violation.

5th If, unfortunately, any of the articles contained in this treaty should be violated or infringed in any way whatever, it is expressly stipulated that neither of the two contracting parties

caciones; i desde el mismo dia cesará de tener efecto el tratado[1] concluido entre Colombia i los Estados Unidos el 3 de Octubre de 1824, no obstante lo dispuesto en el primer punto de su artículo 31.

3º Sin embargo de lo antedicho, si doce meses antes de espirar el término de veinte años estipulados arriba, ninguna de las partes contratantes notificare a la otra su intencion de reformar alguno o todos los artículos de este tratado, continuará siendo obligatorio dicho tratado para ambas partes mas allá de los citados veinte años, hasta doce meses despues de que una de las partes notifique su intencion de proceder a la reforma.

4º Si alguno u algunos de los ciudadanos de una u otra parte infrinjieren alguno de los artículos contenidos en el presente tratado, dichos ciudadanos serán por ello personalmente responsables, i no se interrumpirá en su consecuencia la armonía i buena correspondencia entre las dos naciones, comprometiéndose cada una a no protejer de modo alguno al ofensor, ni a sancionar semejante violacion.

5º Si desgraciadamente algunos de los artículos contenidos en el presente tratado fuesen en alguna otra manera violados o infrinjidos, se estipula espresamente que ninguna de las dos partes contra-

[1] Treaty of October 3, 1824 (Document 47).

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shall ordain or authorize any acts of reprisal, nor shall declare war against the other on complaints of injuries or damages, until the said party considering itself offended shall have laid before the other a statement of such injuries or damages, verified by competent proofs, demanding justice and satisfaction, and the same shall have been denied, in violation of the laws and of international right.

6th Any special or remarkable advantage that one or the other power may enjoy, from the foregoing stipulations, are and ought to be always understood in virtue and as in compensation of the obligations they have just contracted and which have been specified in the first number of this article.

ARTICLE 36th

The present treaty of peace, amity, commerce and navigation shall be approved and ratified by the President of the United States, by and with the advice and consent of the senate thereof, and by the President of the Republic of New Granada with the consent and approbation of the Congress of the same, and the ratifications shall be exchanged in the city of Washington, within eighteen months from the date of the signature thereof, or sooner, if possible.

In faith whereof, we the Plenipotentiaries of the United States of America, and of the Republic of

tantes ordenará o autorizará actos algunos de represalia, ni declarará la guerra contra la otra por queja de injurias o perjuicios hasta que la parte que se considere ofendida haya previamente presentado a la otra una esposicion de dichos perjuicios o injurias, apoyada con pruebas competentes, exijiendo justicia i satisfaccion, i esto haya sido negado con violacion de las leyes i del derecho internacional.

6º Cualquiera ventaja especial i señalada que la una o la otra potencia reporte de las estipulaciones anteriores, es i debe entenderse siempre en virtud i como compensacion de las obligaciones que acaban de contraer i quedan especificadas en el número primero de este artículo.

ARTÍCULO 36.

El presente tratado de paz, amistad, comercio i navegacion, será aprobado i ratificado por el Presidente de la República de la Nueva Granada con acuerdo i consentimiento del Congreso de la misma; i por el Presidente de los Estados Unidos de América con acuerdo i consentimiento del Senado de los mismos, i las ratificaciones serán canjeadas en la ciudad de Washington dentro de diez i ocho meses contados desde el dia de la firma, o antes si fuere posible

En fé de lo cual, nosotros los Plenipotenciarios de la República de la Nueva Granada i de los Es-

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New Granada have signed and sealed these presents in the city of Bogotá on the twelfth day of December, in the year of Our Lord one thousand eight hundred and forty six.

B A. Bidlack [Seal]
M M Mallarino [Seal]

tados Unidos de América hemos firmado i sellado las presentes en la ciudad de Bogotá el dia doce de Diciembre en el año de Nuestro Señor mil ochocientos cuarenta i seis.

M M Mallarino
B A Bidlack

Additional Article

The Republics of the United States and of New Granada will hold and admit as national ships of one or the other, all those that shall be provided by the respective Government with a Patent issued according to its laws.

The present additional article shall have the same force and validity as if it were inserted, word for word, in the Treaty signed this day. It shall be ratified, and the ratifications shall be exchanged at the same time.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto their seals.

Done in the city of Bogota, the twelfth day of December, in the year of Our Lord one thousand eight hundred and forty six

[Seal] B A Bidlack
M M Mallarino

Artículo Adicional.

Las Republicas de la Nueva Granada y de los Estados Unidos tendrán y admitirán como buques nacionales de una ú otra, todos aquellos que esten provistos de una patente del respectivo Gobierno, expedida conforme á las leyes del pais.

El presente artículo adicional tendrá la misma fuerza y validez que si se hubiera insertado, palabra por palabra, en el tratado firmado hoy; sera ratificado, y las ratificaciones serán canjeadas, en el mismo tiempo.

En testimonio de lo cual, los respectivos plenipotenciarios lo han firmado y sellado con sus sellos.

Dado en la ciudad de Bogota, el dia doce de Diciembre en el año de Nuestro Señor mil ochocientos cuarenta y seis

[Seal] M M Mallarino
B A Bidlack

NOTES

The signed originals of the treaty and of the additional article are separate papers; in each the English version is written in the left columns and the Spanish in the right; as the printed texts show, the

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alternat was duly observed. The other documents in the treaty file are in customary form; they include the duplicate United States instrument of ratification of June 10, 1848, and the original proclamation of June 12, 1848; with these two instruments the originals of the treaty and of the additional article were, it seems, formerly bound; the certificate of the exchange of ratifications at Washington, of June 10, is written in English and Spanish; the attested resolution of the Senate of June 3, 1848 (Executive Journal, VII, 424), is lacking. The instrument of ratification of July 15, 1847, on the part of New Granada, includes both versions of the treaty and of the additional article, the Spanish in the left columns.

The Earlier Treaties

The treaty of October 3, 1824, with the former Republic of Colombia (Document 47), had terminated on May 27, 1837, twelve years after the exchange of ratifications, except as to "those parts, which relate to peace and friendship" (Article 31). With two of the three successor republics, Venezuela and Ecuador, new treaties had been made in 1836 and 1839 (Documents 80 and 90).

For a treaty with New Granada, the basis which the Government of the United States desired and proposed was the treaty with Venezuela of January 20, 1836 (Document 80); by Article 4 thereof national treatment was accorded to the vessels and cargoes of the two parties; but until the negotiation of this treaty of 1846, the Government of New Granada was unwilling to suppress its differential or discriminating duties then existing (see Rivas, Relaciones internacionales entre Colombia y los Estados Unidos, 75–85, 147–49); the two-fold nature and effect of the discriminating duties were thus described by William M. Blackford, Chargé d'Affaires at Bogotá, during the negotiations for a treaty of commerce carried on by him with the New Granadan Secretary of Foreign Relations, Joaquin Acosta, in 1843 and 1844 (D.S., 10 Despatches, Colombia, No. 11, June 3, 1843):

> 1. Five per cent. more duty is levied, upon American produce, or manufactures, when imported under the American flag, than when introduced in national vessels. This discrimination is made against the flags of all nations, with which New Granada has no treaties. The Tonnage and Port duties are also twice as great, upon American as upon national vessels. Of course, all these discriminating duties will be, at once, abolished by a Treaty, upon the basis of the most favored nation. The duty is assessed upon the valuation—always an exorbitant one—at the port, and not upon the Invoice price. Upon our cottons, under the present Tariff and Custom House regulations, the discrimination is equal, on the average to an addition of 27 pr. cent to the regular duty. American Cottons, in spite of these disadvantages, compete successfully, in this market, with British fabrics of the same quality; and it is reasonable to suppose that, admitted under no higher duties, the demand for them would be greatly increased.
>
> 2. Upon goods, not the production of the country to which the importing vessel belongs, five per cent more duty is charged, than when the same articles are introduced under the flag of the nation which manufactures them. The Law is general in its terms, but its practical operation is exclusively against us. The British, or French, Merchant has seldom occasion to bring in, under his national flag, goods which are not the products of England or France respectively. The Law, therefore, to him is a nullity. But, as an assorted cargo, for this country,

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cannot be made up, in the United States, without a portion of European goods, the American importer encounters, in the markets of New Granada, the same description of merchandize, which—as coming direct from the country of its production—is admitted at the less rate of duty. It will be seen that this discrimination virtually prevents European goods from reaching this country, by the way of the United States.

To this second class of discriminating duties the people seem strangely attached. It enlists in its support, also, the English and the French influence. When told that a repeal of this duty would not only increase the revenue, but enable goods to be brought hither, by the way of the United States, cheaper than they can now be, direct from Europe, sensible men admit the facts—but argue against the repeal, on the ground that it would throw the whole of the commerce of the country into our hands—a monopoly which they seem greatly to deprecate.

The objection, on the part of the authorities, to making a Treaty on the basis of the abolition of these duties, is the disturbing influence it would have, as they allege, upon their commercial relations, with England and France, as defined by Treaties. They demand, therefore, of us, equivalents—however nominal—for the repeal, in the shape of exemption from duty of some articles which they export to the United States, so that, if other nations demand the like privileges, they may be required to pay for them the same price. I believe I should have made a Treaty, had I been authorised to stipulate for the admission into our ports, duty-free, of their Tobacco—trifling as is the quantity and inferior the quality of the article which they raise for exportation. As it is, I am persuaded these duties will not be repealed, by legislation, or Treaty, without they obtain some equivalents, however trivial they may be.

In view of the position of the two Governments at the time, no agreement within the powers of the American Plenipotentiary was possible; and finally, as he was about to return to the United States, Blackford signed, *sub spe rati*, on December 20, 1844, a treaty of commerce in thirty-five articles;[1] that treaty, in the matter of the duties and generally otherwise, was written on the basis of the most favored nation and would thus only in part, but not wholly, have ended the discriminating duties;[2] aside from the clauses here particularly in question, it was based on the treaty of 1836 with Venezuela, though omitting the qualified "free ships, free goods" provisions of that treaty (Article 15, in part, and Article 16).

The Blackford treaty of 1844 was not definitively acted on by the Senate,[3] where it was received on February 26, 1845 (with a presidential message of February 21), a few days before the close of the Tyler administration, referred to the Committee on Foreign Relations, and ordered printed with the accompanying papers (Senate Confidential Document No. 5, 28th Congress, 2d session, Regular

[1] The date of the signature of this treaty, December 20, 1844, is also the date of the exchange of ratifications of the postal convention of March 6, 1844, with New Granada (Document 105); according to Rivas, *op. cit.*, 99, Blackford left Bogotá four days later.

[2] The drafting of the duties clauses was peculiar; by Articles 4 and 5 of the Blackford treaty national treatment in respect of them was mutually accorded; but in Article 6 it was written that the "dispositions of the two preceding articles will only have effect whilst other nations enjoy the advantages that said articles grant to the respective flags".

[3] See Executive Journal, VI, 399, 400, 429, 453, and VII, 40, 103, 167–68, 180; the signed original of the treaty of 1844 has not been found in the archives of the Department of State.

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Confidential Documents, XVIII, 383–419); it was again referred to committee on March 10, 1845, and reported without amendment on the following March 19; no action having been taken at that session, it was once more referred to committee on February 3, 1846, and again reported [1] without amendment on the following June 24; as no action was had at that session, it was for the fourth time referred to committee on December 22, 1846, and ordered again to be printed with the accompanying documents (Senate Confidential Document No. 3, 29th Congress, 2d session, Regular Confidential Documents, XX, 535–70); on the same day the Senate requested further papers, which were furnished on January 16, 1847, with a message of January 11; but those papers seem not to have been printed; they were voluminous, going back to 1835, with a total of forty pieces, including those previously transmitted (D.S., 6 Report Book, 226–27). On the following February 15 the treaty of 1846 reached the Senate.

It is of some interest to note that the request of the Senate of December 22, 1846, for further papers, followed by three days a letter of Secretary of State Buchanan to the Chairman of the Committee on Foreign Relations (Senator Ambrose H. Sevier) wherein it was said that the Department then had no copy of the treaty of 1844 and its return was requested "with the action of the Senate upon it" (*ibid.*, 225–26; printed in Moore, Works of James Buchanan, VII, 172–73).

The Negotiations

This treaty was negotiated and signed by Benjamin A. Bidlack, Chargé d'Affaires of the United States, without full powers from his Government and without instructions. Bidlack was appointed Chargé d'Affaires to New Granada on May 14, 1845; and he was well aware of the desire of his Government to make a treaty with New Granada "upon the basis of general reciprocity", although his early instructions were silent on the point and dealt chiefly with claims (D.S., 15 Instructions, Colombia, 93–100, June 23, 1845).

Under date of January 2, 1847, three weeks after the signature of this treaty of December 12, 1846, instructions for the negotiation of a treaty were sent to Bidlack, transmitting a full power under date of December 29, 1846 (D.S., 3 Credences, 187), which was in customary form, authorizing Bidlack "to negotiate of and concerning the commerce and navigation between the United States and the Republic of New Granada and of all matters and subjects connected therewith". In the instructions mentioned this was written (D.S., 15 Instructions, Colombia, 107–11):

> As you express an opinion that you would be able to conclude a commercial treaty with New Granada, abolishing discriminating duties, a Full Power, authorizing you to conclude and sign such a Treaty, is herewith transmitted.
>
> You will have learned from the instructions which have from time to time been addressed to your predecessors in the Legation, that such a Treaty, upon the

[1] This report was subsequent to the period limited for the exchange of ratifications; that period of eighteen months from the date of signature had expired on June 20, 1846.

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basis of general reciprocity, has long been desired by the United States. Treaties of this character already exist with the Republics of Venezuela and Ecuador, two of the constituent parts of the former Republic of Colombia; and good reasons exist why a similar Treaty should be concluded with New Granada, the remaining portion of that Republic.

Mr Blackford, shortly before his departure from Bogotá, deemed himself warranted by the circumstances in concluding and signing a Treaty [of December 20, 1844] upon a different basis, but this did not receive the approbation of the Senate. Without directly rejecting it, they suffered it to fall, by declining to act upon it. The time for the exchange of the ratifications has long since expired; so that it has now become a mere nullity and presents no obstacle to a new negotiation.

Our treaties with Venezuela and Ecuador [Documents 80 and 90], copies of which I transmit with a few marginal notes, may be your models in framing a Treaty with New Granada.

It is true that a Treaty of general reciprocity with that Republic would greatly benefit both our navigation and commerce; but it is equally certain that it would in a corresponding degree encourage their domestic productions. Trade being but an exchange of equivalents, if they receive more from us, we would consume more of the articles which they export. Besides, we are anxious to strengthen our friendly relations with all the South American Republics, and there is no more effectual means of accomplishing this purpose than by a Treaty of Commerce based upon the most liberal terms of perfect reciprocity. But I need not go into details upon a subject which you perfectly understand.

The principal obstacle to the conclusion of a Treaty with New Granada upon the only basis which would prove acceptable to the Government of the United States, has hitherto been the opposition of the Legislature of that Republic to such a measure. If, therefore, your efforts should prove successful, the Treaty ought to be ratified with the approval of their Congress before it shall be transmitted to the United States for ratification by this Government.

The treaty which had been signed by Bidlack, however, went far beyond those instructions; the bases for most of its articles were the earlier treaties with Venezuela and Ecuador (Documents 80 and 90); but Article 25 of Bidlack's treaty abolished privateering in case of war between the two countries; the additional article regarding the nationality of ships sailing under the respective flags went further than the former treaties; and above all, the guaranty provisions of Article 35 regarding the Isthmus of Panama embodied a wholly new principle in the policy of the United States and one which proved to be of momentous and permanent importance (see Moore, Digest, III, 2–19); the views of the Department of State, as expressed not long before the date of this treaty, may be compared with those clauses of Article 35 (D.S., 15 Instructions, Colombia, 76–80, to William M. Blackford, May 20, 1842):

The projects for facilitating the communication between the Atlantic and Pacific oceans by means of a canal or railroad across the Isthmus of Panama, are connected with this topic [negotiation of a treaty of commerce]. The states of Panama and Veragua, which comprise that Isthmus, were for some time separated from the other States of New Granada, and in the course of last year applied to this Government to be acknowledged as an independent power with the title of the State of the Isthmus. The application, though not granted, was respectfully received and considered, and a special agent on the part of this government was about to proceed to that quarter for the purpose of inquiring into the ability of the people of the Isthmus to maintain their independence, when intelligence arrived that Panama and Veragua had reünited themselves to New Granada. A treaty of commerce with this Republic, placing our citizens on a footing of equality with other foreigners within its confines, might serve to prevent a grant

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by the New Granadian Government to any other foreign government, company or individuals of a special privilege in regard to the communication above referred to or, if such privilege should be accorded, might give us a right to claim the same, or indemnification if it should be refused. It is of great importance to the United States that the rail-road or canal referred to should be constructed, and that we should have the free use of it upon the same terms as the citizens or subjects of other commercial nations. You will consequently be diligent in your inquiries in relation to this matter.

The lack of full powers and instructions to Bidlack was well understood at Bogotá. In his despatch of November 20, 1846, Bidlack wrote: "Please send imediately, if not allready on the way, authority and instructions to make a Treaty, abolishing the *differential* duties. The Government here has agreed to make such a Treaty" (D.S., 11 Despatches, Colombia, No. 27). Just a week later he wrote again as follows, mentioning the subject of a right of way across the Isthmus of Panama and stating his intention to proceed with the framing of a treaty (*ibid.*, No. 28, November 27, 1846):

I am anxiously awaiting authority and instructions to make a Treaty with this Government abolishing the differential duties which are now charged against us

I have the promise of this Government to make such a Treaty and am desirous of concluding it at once as the Government may change its views hereafter

I think it proper allso to observe that from various causes which I will not now stop to mention I consider it important that a Treaty should *imediately* be made with New Granada securing to the Government of the United States *the right of way across the Isthmus of Panama* I think I have prepared the way for such a Treaty, But I have candidly advised the Secretary of Foreign Relations, that I have not as yet any special powers or instructions to act on either of the above points He has nevertheless signified his willingness to open negociations with me in refference to both in order that if we should be fortunate enough to agree upon anything satisfactory to the President of the United States it may be presented to the Senate of the United States at its aproaching session

Under all the circumstances I have concluded to receive and act as far as I can upon any propositions which he may make to me, letting it appear upon the face of the correspondence that I do not profess to have power or instructions from my Government, and thus leaving the President of the U. States at full liberty to confirm & perfect or treat as a nulity, whatever may be thus agreed upon between us

It seems to me that nothing can be lost and much perhaps may be gained by this course

Hoping to receive full powers and directions as speedily as possible. . . .

The question of a guaranty[1] seems to have been definitely presented only four days before the signature of the treaty; Bidlack wrote thus on December 9 (*ibid.*, No. 29):

I am engaged in pursuance of the intimation contained in my last dispatch every day in conference with the Secretary of Foreign Relations And sometimes with the President himself in endeavouring to arrange a *Projet* for a Treaty abolishing differential duties.

As the interviews have heretofore been *informal* and mostly with President [Tomás Cipriano de] Mosquera, I could not of course ask him to sign any Protocol of the conversations But I yesterday intimated to the Secretary of Foreign Relations the propriety of our noting and signing a memorandum of our future interviews, which I presume he will consent to

[1] The previous history of the question of the Isthmus and the policy of the Government of New Granada are treated in Rivas, *op. cit.*, chs. 2, 4, and 5.

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I had intended, to endeavour to agree upon the terms of a *Seperate* Treaty in relation to the Isthmus of Panama—But in our conversation yesterday Mr Mallarino intimated that it would be advisable to include both questions or subjects in the one Treaty, Stating among other reasons that he did not wish as long as it could be avoided to call the attention of the British, Legation or Government, to the movement, and that, if the Granadian Government abolished the diffrential duties and ceeded to the United States the right of way across the Isthmus he presumed, the United States would *Gurantee* to New Granad the Isthmus or at least as much of it as was required for the construction of a canal or Rail Road upon the most favourable Route, and moreover that it was important that this *Gurantee*, should appear in the Treaty as a *condition* for the right of way and the abolition of the discrimnating or differential duties, otherwise New Granada, would be obliged to grant the same privilegs unconditionally to England, with which Government they had a treaty to that effect [of April 18, 1825; British and Foreign State Papers, XII, 661–73].

I replied that, the Gurantee might be considered very litle short of a Treaty of alliance, and that such treaties were inconsistent with the established and cherished policy of the United States

He remarked that he did not expect a Treaty of general alliance but only a Gurantee limited to the Isthmus, such as would not be at all inconsistent with the early declared policy of the United States in relation to the South American Republics as reiterated by President Polk to the Congress of 1845.6 [see Richardson, IV, 398–99, message of December 2, 1845].

There is to be an other conference this afternoon, and as the mail closes in the morning, I have no opportunity to say more and I hope you will excuse the haste with which I have written At this distance from my Government, and without instructions, I feel a deep responsibility in acting and at the same time I fear that by refusing to act the opportunity of securing important rights in the Isthmus & the abolition of the differential duties may be lost

The protocol of the conference held "this afternoon" (December 9) was the only protocol of the negotiations; it was signed concurrently with the treaty in the following terms (D.S., 11 Despatches, Colombia, No. 32, December 14, 1846, enclosure, original):

Protocol of a conference held in Bogotá, on the 9th of December 1846, for the negotiation of a Treaty of Amity, Commerce and Navigation between the Republics of the United States and New Granada.

Benjamin A. Bidlack the Chargé d'Affaires of the United States, and Manuel M. Mallarino the Secretary of Foreign Relations of New Granada, having had various free and frank conversations, in relation to the propriety of concluding a Treaty between the two Republics; in which conversations it was stated by Mr Bidlack that he had not yet received Instructions or power to make such a Treaty, but that he expected to receive them when it was known by his Government that the Government of New Granada was willing to treat under these circumstances, and having received, as a kind of direct opening of the Negotiation, the adjoined Report, marked with the letter A [see *infra*], the Undersigned have agreed to continue these Negotiations, in hopes that they may be so fortunate as to agree to the terms of a Treaty that may be satisfactory to the Governments of the United States and New Granada, and which may be submitted for confirmation and ratification to the approaching sessions of their respective Congresses, in the same form as if both Negotiators had been provided with equal full powers to that effect.

In pursuance of this understanding, and taking the Treaty of the 20th of January 1836 between the United States and Venezuela [Document 80] as a basis, Mr Mallarino proposed to insert after the word "merchandize", in the 3rd article, the following—"of lawful commerce or whose production or sale have not been "or will not be reserved by the laws to the respective Governments."

To this addition Mr Bidlack objected, in as much as it was agreed to insert the 4th article of the Treaty with Venezuela, in which both the importations

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and exportations were limited to such articles as might be lawfully imported or exported; there was no necessity for this addition to the 3rd article, and that moreover the terms used in the proposed amendment were so vague and uncertain that they might result in misunderstanding hereafter.

At the close of the 11th article Mr Bidlack proposed to strike out the words—"Until they may be exported".

Mr Bidlack stated, that the inadvertant insertion of these words in previous Treaties, had given rise to some misunderstanding and difficulties, under the question whether it did not give the right to demand export duties upon the exportation of the cargoes of vessels which had merely come into port in distress, and that, as the Constitution of the United States prohibits any export duties, there could be no reciprocity. Mr Bidlack therefore proposed to make the closing paragraph of this Article read as follows—"Unless they may be destined for sale and consumption in the Country into the port of which they have thus entered".

With regard to the 14th article, Mr Mallarino having proposed to limit to a considerable extent the provissions of the Treaty between the United States and Venezuela, Mr Bidlack expressed his desire for the insertion of the entire article.

In referrence to the 1rst point, newly introduced by Mr Mallarino in the 35th article, Mr Bidlack stated, that the obligation to guarantee the integral possession of those portions of territory between the Continents that "the universal mercantile interest require to be free and open to all nations" might *quoad hoc* be considered at least a *quasi* alliance; and, to some extent, contrary to the policy of the United States, for agreeing to which the abolition of all differential duties might not be considered a sufficient equivalent.

Mr Bidlack stated moreover that the abolition of the "differential duties" was reciprocal, and therefore could not fairly give to either of the high contracting parties a claim for other equivalents; but he frankly admitted, that the Government of the United States was desirous of the abolition of these differential duties, and might be willing to receive it as a *partial* consideration for the proposed guarantee. He however contended, that this guarantee of territory and the guarantee of "the right of way" over said territory, or what had been termed "the right of transit" over the "interocceanic passage", should also be reciprocal and included in the same Treaty.

All these propositions having been accepted after a slight discussion, the 1rst point of the 35th article was accordingly altered, and it was further agreed that the Treaty should be finally signed, at the same time that this Protocol, on Saturday the 12th instant.

In faith whereof the present Protocol was signed in duplicate, as well as the Treaty refered to in it, in Bogota, on the twelfth day of December in the year of Our Lord eighteen hundred and forty six.

[Seal] B A Bidlack
[Seal] M M Mallarino

Under date of December 10, 1846, the New Granadan Secretary of Foreign Relations presented an "Exposition of Motives" (referred to in the foregoing protocol as "the adjoined Report"); regarding the translation[1] of this very interesting paper, printed below, Bidlack wrote in his despatch (undated) of December 10 or (more probably) December 11 (D.S., 11 Despatches, Colombia, No. 31) that it had been "made by the translating clerk in the State Department here":

[1] The wording here is from what may be deemed the original of the translation, which is signed by Mallarino and is with Bidlack's despatch No. 32; the copy enclosed with despatch No. 31, which is not now available, was perhaps sent to the Senate with the presidential message of February 10, 1847, transmitting this treaty, for a pencil notation on the original translation, initialed by Nicholas P. Trist, then Chief Clerk of the Department of State, and dated February 9, 1847, indicates that that copy was conformed to the original, whereto the Senate print corresponds. The Spanish version is not with the despatches.

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A

Secret and Confidential

Report upon the Reasons That Make the Stipulations of the Treaty Proposed, Useful and Acceptable to the United States of America

I. The conduct observed by Great Britain in various parts of the South American continent—especially in the Argentine Republic (where that power pretends the right of extraterritoriality for her flag in the lengthy course of the mighty rivers of that country), upon the Orinoco, in eastern Venezuela, and in the Mosquito Shore on the Isthmus, unveil a preconceived and long-meditated intention of grasping the most mercantile spots of America, putting the competition of the United States out of the question, and dictating her will as a law in all matters concerning the consumption of foreign commodities. And in effect, as it is well known that the Orinoco is naturally communicated with the Amazon, that this river is interwoven with the Plata, and that all of them receive in their bosoms several lateral tributaries that are for many leagues navigable in divers directions, it is quite plain that as soon as the encroachments of Great Britain shall be realized in the mouths of the Orinoco, she will overflow all South America with her manufactures, without the drawback of any customhouse barriers. No manufacturing country would be able to stand in competition with powerful England in those great and unencumbered mercantile thoroughfares that are now deserted but which she would almost exclusively reserve to herself upon acquiring their ownership. And if the usurpation of the Isthmus in its channelizable portion should be added to these encroachments, the empire of the American seas, in its strictly useful or mercantile sense, would fall into the hands of the only nation that the United States can consider as a badly disposed rival. It would be perfectly superfluous to mention the political consequences that would be entailed upon America by the uncontrolled dominion of a nation as ambitious as it is little fastidious about the means by which her ends are to be obtained. Great Britain would, in effect, virtually acquire a complete ascendancy over all America if, to the dominion that she already exercises in the interior parts of Mexico under the pretense of mining works, she should add the so-much-wished-for possession of the Californias, and of the Isthmus, and of the great mouths of the Orinoco on the coast of Venezuela, and of the Plata and other rivers adjoining it on the Argentine seaboard or coast. This dominion or ascendancy would be equally ruinous for the commerce of the United States and for the nationality of the Spanish American Republics, most direful for the cause of democracy in the New World, and constantly disturbant of public peace in this our continent.

II. From these facts and general considerations may be inferred the urgent necessity in which the United States are, of interposing their moral influence, and even their material strength, between the weakness of the new republics and the ambitious views of the commercial nations of Europe, and particularly of Great Britain. This protecting mediation must have an entirely peaceful and conventional origin, as its effects would necessarily touch upon or be referent to the liberty of the American seas and the mercantile interests of this hemisphere, as well in the exportations of its productions, to be *freely* exchanged in a *free competition* with foreign effects, as for the receipt of these very foreign effects, which ought to be only lawfully made with equal advantages for all importers. On account of these reasons, and for the convenience of not awakening international jealousies by extraordinary and especial treaties, the guaranty of territorial possession to be given by the United States ought to be incidentally introduced in treaties of commerce, as a part of, and subordinate to, them; but this should be done so that, at the same time that the freedom of the seas should be assured, the nations of Europe should be compelled to abandon their anti-American plans, and Great Britain her plans of territorial encroachments, or, in case they should not abandon them, that their trade should suffer the damages consequent on the want of a participation in the franchises that the United States would thus acquire. This end is simply and naturally to be obtained by stipulating, in favor of the United States, "the total repeal of the differential duties, as a compensation of the obligation they impose upon themselves of guaranteeing the legitimate and complete or integral possession of those portions of territory that the universal mercantile

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interests require to be free and open to all nations". In the Granadan treaty this guaranty of territorial property and neutrality would only refer to the provinces of the Isthmus, from their southernmost extremity until the boundary of Costa Rica.

When a treaty containing such a stipulation shall exist between New Granada and the United States—and it could be completed and perfected by a subsequent and complementary convention in which the transit of the interoceanic passage should be arranged and its *permanent neutrality* strengthened—half the plans of Great Britain would fall by themselves, as it would no longer be possible for her to encroach upon the Isthmus nor to free herself from the rapid consequences of the mercantile inequality under which she would have to suffer, unless she invited New Granada to alter, upon the same conditions, the British treaty [cited above], constituting herself thereby also as a guaranteeing power of New Granada's sovereignty upon the Isthmus. This would also be done by France; all the other nations with whom New Granada has express relations would do the same; and in this manner the guaranty would become a matter-of-course clause and a fact of universal interest. It thus appears that, without having to fear the eventuality of a war with any other power in order to maintain the sovereignty of New Granada over the Isthmus, without bringing upon themselves any kind of burdensome engagement, the United States can accept this clause and thereby effect an entire change in the intentions of Great Britain, strengthening at the same time the future freedom of the American seas and the mercantile advantages which the United States must always enjoy on account of their proximity to our markets.

This blow would become complete if the United States should be able to sign similar treaties with Venezuela respecting the Orinoco and with Buenos Aires, respecting the Plata and other neighboring navigable and connected rivers.

III. There are reasons of another kind that should also induce the Government of the United States to bestow their favorable attention on these measures. Some of such reasons are referable to the necessity in which the United States are, as an American power, of using the most efficacious vigilance for the maintenance of the existing order of things, as the most singularly favorable to their tranquillity and aggrandizement. The United States have now nothing to fear and a great deal to hope for from the neighboring democracies; but all the contrary would happen if the direct influence and the political institutions of Europe should once enthrone themselves in the South American regions. The other reasons are relative to the United States' own fame and reputation, as assuredly nothing would so brilliantly vindicate them, nor acquire them a greater augmentation of American affections, than the fact that they, after having been branded as the oppressors and future conquerors of the Spanish-American republics, should present themselves as the most zealous protectors of the territorial integrity of those very same republics, in whose preservation they would appear taking an open and direct interest.

And, really, the acquisition of such a treasure of glory and affections, most usefully subservient to the mercantile interests of the United States, is a step entirely exempt from any cost or risk, and which the Washington Cabinet should surely take without hesitation or delay; for to the gratuitousness of its consummation are to be added honor, necessity, and expediency, which all plead with an equal eloquence in favor of this measure.

Bogotá, 10th of December, 1846.

M M MALLARINO

The despatch of Bidlack transmitting the treaty, which is printed below, does not add very much to the story; it shows that little or nothing was reduced to writing until the last days of the negotiations (D.S., 11 Despatches, Colombia, No. 32, December 14, 1846):

On the 11th Inst. I had the honor to enclose you a rough draft of a Protocol, in relation, to a Treaty with this Government, for the *abolition of all differential duties*, and the *free passage of The Isthmus of Panama*

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I now enclose to you herewith a copy of the Treaty agreed upon, together with a copy of a Protocol of all the Conferences that were Reduced to writing, allso a letter[1] from President Mosquera upon upon the subject:

As I stated in a previous dispatch, many of the interviews upon the Subject of this Treaty were holden informally with President Mosquera himself at different times as occasion presented, he having signified a willingness to converse thus freely, with me upon these important, measures

These interviews have continued from time to time for the last 6 or 8 months

Not having much hopes of effecting anything at the first interviews I kept no memoranda of the conferences, and consequently can not send any copies of them

It will be remembered that in my dispatches in the early part of September last, I intimated my hopes of being able to make a Treaty, and that I Solicited powers and instructions.

As the Senate of the United States adjourns on the 4th March next, and as it was advisable that, whatever Projet should be agreed upon should be presented at its present Session, in case the President should deem it of sufficient importance; The Granadian Government under these circumstances proposed to consider me as having full powers and, as will be seen has negociated with me accordingly, and I now send you the result

It would be useless to speak of the terms of this Treaty, you will have it before you and it must explain itself. I will only say that so far as it relates to commerce and navigation it conceeds to the United States the *abolition of all differential* duties a concession which has heretofore been urged in vain for the last 20 years, and in all other respects it is as liberal as any Treaty we have with any other nation. You will observe that the 14th Article in relation to the right of worship & the liberty of conscience, grants the most entire freedom, and that it is much, more tollerant than the Treaty with Colombia [see Article 11 of the treaty of October 3, 1824, Document 47] in that respect.

With regard to the right of transit, & free passage over the Isthmus, (which appeared to me to, be, becoming of more and *more importance every day*) I have only to remark that I have procured the "largest liberty" and *the very best terms, that could be obtained*

I could not obtain these terms, without consenting to Gurantee the, integrity and neutrality of the Teritory, and in fact it seemed to me upon reflection, that in order to preserve the rights & privileges thus ceeded it would be both, the policy, the interest and the duty of the United States thus to enter into an obligation to protect them. The Gurantee extends *only to the Isthmus*, and anything like a general alliance is carefully avoided—with these hasty observations, I refer you to the "Exposition of Motives", presented by Mr Mallarino, the Secretary of State in answer to my objection to including, this Question in the Commercial Treaty.

I find from a reference to the correspondence of my predecessors that they have complained much of the prejudices of the Government and people of this country against the Government and citizens of the United States, and of the "partiality in favour of England and the English"

Whether that is now the case you will be enabled to judge after reading Mr Mallarino's "Exposition" with regard to myself personally, I have understood that my diplomatic colleagues sometimes complain of a partiality exhibited in my favour.

It is however proper to inform you that at the commencement of the Mexican war, there, seemed to be some tokens of prejudice against us, but after I had procured the publication of the recent Proclamation of the President offering peace [doubtless the proclamation of General Taylor issued under instructions of June 4, 1846; see House Document No. 119, 29th Congress, 2d session, serial 500, pp. 13–17, 54] and the Proclamation of Comodore Sloat [of July 7, 1846; British and Foreign State Papers, XXXV, 1133–35] in relation to the taking of the Calafornias this feeling appears entirely to have subsided, and I now feel quite confident that this people would much rather fight *for* us than *against* us, but God forbid that there should ever be occasion to put them to the trial

[1] This letter, presumably addressed to President Polk, has not been found.

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I am wandering from the main object of my letter, which is most earnestly to request to be informed of the action of my Government upon this Treaty *as soon as possible* The Congress of New Granada convenes in March next and sits but for a short time. If this Treaty should be approved of by, the President and Senate of the United States The President of New Granada desires to present it for Confirmation, to the aproaching Congress of New Granada There is little doubt that it would be approved by the present Congress, and, no calculations can be made upon, the next Congress because as the next election of President approaches there is no anticipating what Questions may enter into the, Congress, in a country like this.

When I came to this country I expected that our mail packets, for Chagris & Panama would touch every month at Cartagena, as it is no inconvenience to do so, may I at least not be disapointed in anticipating, that one will arrive at Cartgena in February or March with an answer to this and numerous other communications?

I shall send this by express to Cartagena, in hopes of reaching the vessel from New York said [to] be now at that place the regular mail is gone & the next mail would be too late

The despatches of the time give evidence of the haste with which the negotiations were finally brought to a conclusion; and in a despatch, of the same date as that just quoted, are expressed the doubts of Bidlack regarding approval at Washington of his course; therefrom it also appears that Bidlack had not learned officially of the failure of the treaty of December 20, 1844; the last three paragraphs quoted are a postscript (D.S., 11 Despatches, Colombia, No. 34, December 14, 1846):

Since sealing my dispatches to be sent with the Treaty, just concluded with this Government; it has occurred to me that it was possible the President might consider that I had been, rather over officious, in commencing any negociations, without, waiting for more specific instructions than were contained in your dispatch (No 2) of the 23^{d} June 1845

Should this be the case, I shall consider myself very unfortunate for I neither wish to *exceede* or *neglect* my duty. The fact is that from the intimation, contained in the dispatch above refered to I expected before this time to have received notice of the result of the action of the senate upon the former Treaty; and as that Treaty did not abolish the diferential duties I had little doubt it would be rejected, as to the Question of the Isthmus, I considered it dangerous "to let the golden moment pass"

. . . . . .

P.S. You will, see by the "Exposition of Motives" that, the gurantee of posession & neutrality, in the Isthmus is understood by Mr Mallarino to be limited to their "*posesion legitima*" and that only to the "*Costarica*" which does not include the "Mosquito Shore".

I understand from a reliable source that this Government is negociating a "Treaty of limits" with "Central America" by which they will ceede to the latter Government all their claims to the Teritory, north of the southern boundary of Costarica

I have been so much ocupied recently & obliged to write in such haste, to prepare for the Express that I fear that some important points may escape my attention

The Full Powers

In the preamble of the treaty there is the usual formal statement that full powers had been conferred by the respective Governments on the respective Plenipotentiaries and that the Plenipotentiaries

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had "exchanged their said full powers in due form". Nothing further appears as to the full power of Manuel María Mallarino, Secretary of Foreign Relations of New Granada.

As has been mentioned, it was well understood at Bogotá that Bidlack did not at the time have full powers from his Government; the authority granted to him under date of December 29, 1846, was subsequent to the signing of the treaty, even if it could be deemed sufficiently extensive to include its provisions. In his despatch of April 23, 1847, Bidlack acknowledged receipt of his full power and the instructions of the previous January 2 (D.S., 11 Despatches, Colombia, No. 46); and in his next despatch, of May 14 (*ibid.*, No. 47), he enclosed the original of the following protocol of April 15, when his full power was communicated to the Secretary of Foreign Relations of New Granada:

Protocolo de una conferencia tenida en Bogotá el 15 de Abril de 1847, entre el Secretario de Relaciones Esteriores de la Nueva Granada i el Encargado de Negocios de los Estados Unidos.

Reunidos en dicho dia Manuel María Mallarino, Secretario de Relaciones Esteriores de la Nueva Granada, i Benjamin A. Bidlack, Encargado de Negocios de los Estados Unidos, manifestó este: que habiendo recibido ya los plenos poderes que esperaba de su Gobierno, como tuvo el honor de manifestarlo i consta en el protocolo de la conferencia habida el 9 de Diciembre último; había solicitado la presente entrevista para confirmar con el carácter de Plenipotenciario, como en efecto confirma espresamente, el tratado de amistad, comercio i navegacion entre las Republicas de la Nueva Granada i de los Estados Unidos, firmado *sub spe rati* en esta capital el dia 12 del citado mes de Diciembre.

Mallarino contestó que instruiría con mucho gusto a su Gobierno de la importante declaracion que acababa de oír, i que no dudaba de que sería recibida con igual satisfaccion; pues son bien conocidas la simpatía i amistosas disposiciones de la Nueva Granada hácia su hermana i amiga la República de los Estados Unidos.

En fé de lo cual firman por duplicado el presente protocolo en Bogotá el dia quince del mes de Abril en el año de Nuestro Señor mil ochocientos cuarenta i siete.

B A Bidlack M M Mallarino

[Translation]

Protocol of a Conference Held in Bogotá April 15, 1847, between the Secretary of Foreign Relations of New Granada and the Chargé d'Affaires of the United States.

Manuel María Mallarino, Secretary of Foreign Relations of New Granada, and Benjamin A. Bidlack, Chargé d'Affaires of the United States, having met on said day, the latter declared that, having now received the full powers he was awaiting from his Government, as he had the honor of stating in the protocol of the conference held on the 9th of December last, he had requested the present interview in order to confirm in his capacity as Plenipotentiary, as he does in effect expressly confirm, the Treaty of Friendship, Commerce, and Navigation between the Republics of New Granada and the United States, signed *sub spe rati* in this capital on the 12th day of the said month of December.

Mallarino replied that he would inform his Government with much pleasure of the important declaration which he had just heard, and that he did not doubt that it would be received with equal satisfaction, since the sympathy and friendly disposition of New Granada toward its sister and friend, the Republic of the United States, are well known.

In faith whereof the present protocol is signed in duplicate in Bogotá the 15th day of the month of April in the year of our Lord one thousand eight hundred and forty-seven.

B A Bidlack M M Mallarino

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Subsequent Proceedings

When the treaty was received [1] at Washington, it was laid before the President and considered at a Cabinet meeting of January 30, 1847, of which there is the following record (Diary of James K. Polk, II, 363):

Mr. Buchanan brought before the Cabinet a Treaty recently signed by the U.S. chargé de affairs to New Granada and the Secretary of Foreign affairs of that Republic. As a commercial Treaty it was liberal & in all respects satisfactory, but in addition to its commercial provisions it contained an article giving the guaranty of the U.S. for the neutrality of the Isthmus of Panama, and the sovereignty of New Granada over that territory. Serious doubts were entertained whether this stipulation was consistent with our long-settled policy to "cultivate friendship with all nations, entangling alliances with none." The subject was discussed at some length, and was finally postponed to enable the Secretary of State to give to it a further examination and Report upon the subject.

The decision taken was to submit the treaty to the Senate. The presidential message of February 10, 1847, advocating the treaty and suggesting [2] that guaranties similar to those of Article 35 thereof would be subsequently given by Great Britain and France, appears to have been written by Secretary of State Buchanan (*ibid.*, 373, February 9, 1847). The text of the presidential message follows (Executive Journal, VII, 191–93):

I transmit to the Senate, for their advice with regard to its ratification, "A general treaty of peace, amity, navigation and commerce between the United States of America and the Republic of New Granada," concluded at Bogota on the 12th December, last, by Benjamin A. Bidlack, chargé d'affaires of the United States, on their part, and by Manuel Maria Mallarino, secretary of state and foreign relations, on the part of that Republic.

It will be perceived, by the 35th article of this treaty, that New Granada proposes to guarantee to the Government and citizens of the United States the right of passage across the Isthmus of Panama over the natural roads and over any canal or railroad which may be constructed to unite the two seas, on condition that the United States shall make a similar guarantee to New Granada of the neutrality of this portion of her territory and her sovereignty over the same.

The reasons which caused the insertion of this important stipulation in the treaty will be fully made known to the Senate by the accompanying documents. From these it will appear that our charge d'affaires acted, in this particular, upon his own responsibility and without instructions. Under such circumstances it became my duty to decide whether I would submit the treaty to the Senate; and after mature consideration, I have determined to adopt this course.

The importance of this concession to the commercial and political interests of the United States cannot easily be overrated. The route by the Isthmus of Panama is the shortest between the two oceans, and from the information herewith communicated, it would seem to be the most practicable for a railroad or canal.

The vast advantages to our commerce which would result from such a communication, not only with the west coast of America, but with Asia and the islands of the Pacific, are too obvious to require any detail. Such a passage would relieve us from a long and dangerous navigation of more than nine thousand miles around Cape Horn, and render our communication with our possessions on the northwest coast of America comparatively easy and speedy.

[1] The date of receipt noted on Bidlack's despatch No. 32 is January 28, 1847, "in the evening".

[2] Cf. the "Exposition of Motives", *supra*.

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The communication across the Isthmus has attracted the attention of the Government of the United States ever since the independence of the South American Republics. On the 3d of March, 1835, a resolution passed the Senate in the following words: "*Resolved*, That the President of the United States be respectfully requested to consider the expediency of opening negotiations with the Governments of other nations, and particularly with the Governments of Central America and New Granada, for the purpose of effectually protecting by suitable treaty stipulations with them, such individuals or companies as may undertake to open a communication between the Atlantic and Pacific Oceans, by the construction of a ship canal across the Isthmus which connects North and South America, and of securing forever, by such stipulations the free and equal right of navigating such canal to all nations, on the payment of such reasonable tolls as may be established, to compensate the capitalists who may engage in such undertaking and complete the work."

No person can be more deeply sensible than myself of the danger of entangling alliances with any foreign nation. That we should avoid such alliances, has become a maxim of our policy consecrated by the most venerated names which adorn our history and sanctioned by the unanimous voice of the American people. Our own experience has taught us the wisdom of this maxim in the only instance, that of the guarantee to France of her American possessions, in which we have ever entered into such an alliance. If, therefore, the very peculiar circumstances of the present case do not greatly impair if not altogether destroy the force of this objection, then we ought not to enter into the stipulation, whatever may be its advantages. The general considerations which have induced me to transmit the treaty to the Senate for their advice may be summed up in the following particulars:

1. The treaty does not propose to guarantee a territory to a foreign nation in which the United States will have no common interest with that nation. On the contrary, we are more deeply and directly interested in the subject of this guarantee than New Granada herself or any other country.

2. The guarantee does not extend to the territories of New Granada generally, but is confined to the single province of the Isthmus of Panama, where we shall acquire by the treaty a common and co-extensive right of passage with herself.

3. It will constitute no alliance for any political object, but for a purely commercial purpose, in which all the navigating nations of the world have a common interest.

4. In entering into the mutual guarantees proposed by the 35th article of the treaty, neither the Government of New Granada nor that of the United States, has any narrow or exclusive views. The ultimate object, as presented by the Senate of the United States in their resolution to which I have already referred, is to secure to all nations the free and equal right of passage over the Isthmus. If the United States, as the chief of the American nations, should first become a party to this guarantee, it cannot be doubted, indeed it is confidently expected by the Government of New Granada, that similar guarantees will be given to that Republic by Great Britain and France. Should the proposition thus tendered be rejected, we may deprive the United States of the just influence which its acceptance might secure to them, and confer the glory and benefits of being the first among the nations in concluding such an arrangement upon the Government either of Great Britain or France. That either of these Governments would embrace the offer cannot be doubted; because there does not appear to be any other effectual means of securing to all nations the advantages of this important passage but the guarantee of great commercial powers that the Isthmus shall be neutral territory. The interests of the world at stake are so important that the security of this passage between the two oceans cannot be suffered to depend upon the wars and revolutions which may arise among different nations.

Besides, such a guarantee is almost indispensable to the construction of a railroad or canal across the territory. Neither sovereign states nor individuals would expend their capital in the construction of these expensive works without some such security for their investments.

The guarantee of the sovereignty of New Granada over the Isthmus is a natural consequence of the guarantee of its neutrality, and there does not seem to be any other practicable mode of securing the neutrality of this territory. New

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Granada would not consent to yield up this province in order that it might become a neutral state, and if she should, it is not sufficiently populous or wealthy to establish and maintain an independent sovereignty. But a civil government must exist there in order to protect the works which shall be constructed. New Granada is a power which will not exite the jealousy of any nation. If Great Britain, France, or the United States held the sovereignty over the Isthmus, other nations might apprehend that in case of war the Government would close up the passage against the enemy; but no such fears can ever be entertained in regard to New Granada.

This treaty removes the heavy discriminating duties against us in the ports of New Granada which have nearly destroyed our commerce and navigation with that Republic, and which we have been in vain endeavoring to abolish for the last twenty years.

It may be proper also to call the attention of the Senate to the 25th article of the treaty, which prohibits privateering in case of war between the two Republics; and also to the additional article which nationalizes all vessels of the parties which "shall be provided by the respective Governments with a patent issued according to its laws," and in this particular goes further than any of our former treaties.

The papers accompanying the treaty were printed (Senate Confidential Document No. 6, 29th Congress, 2d session, Regular Confidential Documents, XX, 771–848; Senate Confidential Document No. 4, 30th Congress, 1st session, Regular Confidential Documents, XXIII, 53–130); they included (*a*) Bidlack's despatches of December 9 (in part) and December 14, 1846; (*b*) the protocol signed December 12, 1846, and the report "adjoined" thereto; (*c*) the despatch (undated) of Bidlack of December 10 or 11, 1846; and (*d*) a report to the Senate made by Secretary of State Buchanan on May 7, 1846, with various papers "on the subject of a ship-canal across the isthmus of Panama". All those papers are also printed in Senate Document No. 17, 58th Congress, 1st session, serial 4563.

When the treaty was received in the Senate (February 15, 1847), the short session was nearing its close; the treaty was not reported from the Committee on Foreign Relations until March 3, and no action was then taken (Executive Journal, VII, 235); Secretary of State Buchanan wrote as follows on the point (D.S., 15 Instructions, Colombia, 112–14, March 25, 1847):

The Treaty signed by Mr Mallarino and yourself on the 12th December, last, was promptly submitted by the President to the Senate with the Message and documents which you will find enclosed, but I regret to inform you that its consideration was postponed until the first Monday of December next. This delay has been occasioned by the pressure and urgency of important business, both Legislative and Executive, before the Senate, and the necessarily late period of the session when it was submitted to that body.

Colonel Sevier, the Chairman of the Committee on Foreign Relations,[1] informed me that a protracted debate would have arisen on the 35th Article of the Treaty, containing the guarantee, on the part of the United States to New Granada of the neutrality of the Isthmus of Panama and her sovereignty over the same; and for this reason, the Senate, at so late a period of the session, were unwilling to enter upon its discussion. He entertains fair hopes, notwithstanding, that it will be ratified at the next session by a constitutional majority.

There are strong objections to the additional article, because it would enable the Government of New Granada to naturalize any foreign vessels with their crews it might think proper and to bring them into competition with American vessels

[1] Ambrose H. Sevier, of Arkansas.

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in the trade between the two Countries. With this exception and that of the 35th Article, the Treaty would most probably have been ratified by the Senate without opposition.

I am gratified that the term for the exchange of ratifications will not expire until the 12th June, 1848, thus affording ample time for the action of the Senate upon the treaty before the termination of this period.

General Pedro Alcántara Herrán, formerly President of New Granada, had been appointed Minister to the United States; his credentials were presented on December 7, 1847; one of the immediate concerns of the mission of General Herrán was the acceptance of the treaty by the Senate of the United States; he had particular instructions in that regard; and he had conversations with Senator Sevier and with Senator Edward A. Hannegan, of Indiana (who had[1] become Chairman of the Committee on Foreign Relations upon the appointment of Sevier as Commissioner to Mexico), as well as with Secretary of State Buchanan (see Rivas, *op. cit.*, 199–206).

At the first session of the Thirtieth Congress the treaty was again referred to the Committee on Foreign Relations (January 3, 1848); it was not reported out of committee until June 2; and on June 3, 1848, only nine days before the expiry of the time limited for the exchange of ratifications at Washington, the resolution of advice and consent was adopted; the vote was 29 yeas to 7 nays (see Executive Journal, VII, 278, 423, 424).

In the meantime, and more than a year prior[2] to the action of the Senate, the treaty had received the approval of the Congress of New Granada. In his despatch of September 4, 1847, Bidlack wrote as follows (D.S., 11 Despatches, Colombia, No. 49):

The Treaty signed at this place in December last, was finally approved of by the Granadian Congress at the close of its last session

The reduction of duties upon the staple exportations of our country, which I mentioned in some of my former communications, as having hopes of effecting, together with the abolition of differentiall duties, allso passed as you will have discovered by the papers which, I enclosed at the time

. . . . . .

As the Secretary of Foreign Relations, has, called upon me frequently during my illness, it has enabled me to explain to him verbally the manner in which the Treaty signed by us, had been viewed by the President of the US. & the reasons, why it was not approved at the last session of the US Senate and the prospect of its approval at the meeting in December next

He appeared to be perfectly satisfied, and made many, complimentary remarks, both in relation to the United States & the Legation which it would appear like vanity in me to repeat, and concluded by informing me that I had so favourably impressed the President of New Granada with the importance of cultivating & sustaining friendly relations with the US. that the Government had determined to send a Minister to Washington, and that as the Mission was intended as a particular mark of respect they had selected perhaps the most distinguished & popular man in the Republic for that purpose. The person thus selected is General P A Herran late commander in chief of the Military Forces of the Republic and former President of New Granada

General Herran & his Secretary of Legation Mr Pinzon frequently call to see me. He intends to start on his mission about the first of October and will probably arrive in Washington the latter part of November

[1] On March 14, 1848.

[2] See Rivas, *op. cit.*, 160, where the date of final action is given as May 26, 1847.

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Ratification on the part of the United States and exchange of ratifications by Secretary of State Buchanan and General Herrán followed on June 10, 1848; the treaty was proclaimed two days later; and promulgation in New Granada took place on August 16, 1848 (Codificación nacional de Colombia, XIII, 262–77). Mention of the treaty as one of seven treaties of commerce of "the last four years" was made in the lengthy annual message to Congress of December 5, 1848 (Richardson, IV, 629–70, at p. 629).

Information of the going into force of the treaty was not sent to Bidlack until July 20, 1848, when Secretary of State Buchanan wrote as follows (D.S., 15 Instructions, Colombia, 117):

> The Treaty between the United States and New Granada signed by yourself on the part of your own government, having been duly ratified and proclaimed by the President, I transmit copies thereof. Permit me to congratulate you upon the association of your name with this instrument. It has been most favorably received by the public and, I doubt not, will be of great and lasting advantage to both countries.

Presumably that message of felicitation reached Bidlack before his death on February 6, 1849; but no acknowledgment is of record.

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Treaty Series No. 263
9 Statutes at Large, 868
18 *ibid.*, pt. 2, Public Treaties, 578

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OLDENBURG : MARCH 10, 1847

Declaration of Accession to the Stipulations and Provisions of the Treaty with Hanover of June 10, 1846 (Document 121), signed at Oldenburg March 10, 1847. Original in German and English.
Declarations exchanged at Oldenburg March 10, 1847. As to promulgation, see the editorial notes.

Nachdem ein Schifffahrts- und Handelsvertrag[1] zwischen den Vereinigten Staaten von Amerika und Seiner Majestät dem König von Hannover zu Hannover am 10ten Juni vorigen Jahrs durch die Bevollmächtigten der contrahirenden Theile geschlossen und demnächst von beiden Regierungen gehörig ratificirt worden ist;

Und da durch die Bestimmung des zwölften Artikels desselben „die Vereinigten Staaten zugestehen, alle in den Stipulationen desselben Vertrages enthaltenen Vortheile und Privilegien auf den- oder diejenigen der Staaten des Deutschen Bundes auszudehnen, welche wünschen mögen denselben beizutreten vermittelst eines officiellen Austausches von Declarationen, vorausgesetzt daß solcher Staat oder solche Staaten den besagten Vereinigten Staaten gleiche Begünstigungen wie die vom Königreich Hannover zugestandenen, einräumen und diesel-

Whereas a Treaty[1] of Navigation and Commerce between the United States of America and His Majesty the King of Hanover was concluded at Hanover on the 10th day of June last, by the Plenipotentiaries of the contracting Parties, and was subsequently duly ratified on the part of both Governments:

And whereas, by the terms of the twelfth article of the same, "The United States agree to extend all the advantages and privileges contained in the stipulations of the present Treaty to one or more of the other States of the Germanic Confederation which may wish to accede to them, by means of an official exchange of declarations: provided that such State or States shall confer similar favors upon the said United States to those conferred by the Kingdom of Hanover, and observe and be subject to the same conditions, stipulations, and obligations:"

[1] Document 121.

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ben Bedingungen, Stipulationen und Verpflichtungen beobachten und halten werden:"

Und nachdem die Staatsregierung Seiner Königlichen Hoheit des Großherzogs von Oldenburg den Wunsch zu erkennen gegeben hat, dem genannten Vertrage und allen darin enthaltenen Stipulationen und Vorkehrungen, so weit dieselben auf beide Länder anwendbar sind oder sein mögen, beizutreten und Theilnehmer an demselben zu werden: das heißt an allen besagten Stipulationen und Vorkehrungen, nur diejenigen ausgenommen, welche sich auf den Stader- und die Weserzölle beziehen, wobei das Oldenburgische Gouvernement kein Interesse und worüber es keine Controlle hat:

so haben solchemnach die Unterzeichneten: von Seiten Seiner Königlichen Hoheit des Großherzogs von Oldenburg der Geheimerath und Oberschenk Wilhelm Ernst Baron von Beaulieu-Marconnay, Chef des Departements der auswärtigen Angelegenheiten, und von Seiten der Vereinigten Staaten A. Dudley Mann, als Specialbevollmächtigter, zu diesem Zwecke mit gehörigen Vollmachten versehen, die gegenwärtige Declaration über den Beitritt des Großherzogthums Oldenburg für das Herzogthum Oldenburg zu dem vorbenannten Vertrage /:womit die Vereinigten Staaten hiedurch einverstanden

And whereas the Government of His Royal Highness the Grand-Duke of Oldenburg has signified its desire to accede to the said Treaty, and to all the stipulations and provisions therein contained, so far as the same are or may be applicable to the two countries, and to become a party thereto: that is to say, to all the said stipulations and provisions, excepting only those relating to the Stade and the Weser tolls, in which the Government of Oldenburg has no interest, and over which it has no control:

Now, therefore, the Undersigned, Baron W. E. de Beaulieu-Marconnay, of the Privy Conneil of His Royal Highness and at the head of the Department of foreign Affairs on the part of Oldenburg, and A. D. Mann, Special Agent on the part of the United States, invested with full powers to this effect, found in good and due form, have this day signed in duplicate, and have exchanged this Declaration of the accession—(hereby agreed to on the part of the United States)—of His Royal Highness the Grand-Duke of Oldenburg for the Duchy of Oldenburg to the Treaty aforesaid; the effect of which accession and

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sind:/ am heutigen Tage unterzeichnet und ausgetauscht; und wird dieser Beitritt und diese Annahme hiedurch dahin erklärt, daß der mehrgedachte Vertrag zwischen den hohen Betheiligten bei dieser Declaration eben so vollgültig in allen Puncten errichtet sein soll, als ob alle darin enthaltenen Bestimmungen, außer den oben ausgenommenen, Wort für Wort in einem besondern in der gewöhnlichen Form abgeschlossenen und ratificirten Vertrage vereinbart worden wären.

agreement is hereby declared to be to establish the said Treaty between the High Parties to this Declaration, as fully and perfectly to all intents and purposes as if all the provisions therein contained, excepting as above excepted, had been recited word for word in a separate Treaty, concluded and ratified between them in the ordinary form.

Zur Urkunde dessen haben die oben genannten Bevollmächtigten ihre Namen und Siegel hierunter gesetzt. So geschehen zu Oldenburg, den 10ᵗ März 1847.

W E von Beaulieu Marconnay
[Seal]

In witness whereof, the above named Plenipotentiaries have hereto affixed their names and seals. Done at Oldenburg this tenth day of March 1847.

A. Dudley Mann.
[Seal]

NOTES

The treaty file comprises two instruments: an original of the declaration, as printed above, written in parallel columns, in German and English, the German version at the left; and a protocol of the exchange, in English (which bears a pencil notation that it was received on April 23, 1847), reading as follows:

The Treaty of Navigation and Commerce between the United States and the Kingdom of Hanover, concluded on the 10th day of June, 1846 [Document 121], and since duly ratified by both parties, having been communicated to Baron Beaulieu Merconney, Minister of Foreign Affairs of the Grand Duchy of Oldenburg, to be laid before his Government, in order that it might take into consideration the expediency of availing itself of the 12th article of said Treaty, by becoming a party to the same; and the Government of the Grand Duchy of Oldenburg, desirous of strengthening the bonds of friendship and good understanding which so happily subsist between the two countries, and, like the Government of Hanover, to use every means in its power to extend the commercial relations between Germany and the United States, having conferred full powers on Baron Beaulieu Marconney to exchange declarations with A. Dudley Mann, furnished by the President of the United States with like full powers, the respective Plenipotentiaries—whose signatures and seals are hereunto affixed—met in the City of Oldenburg this day, the 10th of March, 1847, and effected such exchange: And thus this Protocol concludes.

A. Dudley Mann.
[Seal]

Beaulieu Marconnay
[Seal]

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The exchange of ratifications of the treaty with Hanover of June 10, 1846 (Document 121), took place on March 5, 1847; that treaty had been signed with the expectation of a similar agreement with the Grand Duchy of Oldenburg (see generally the notes to Document 121); on June 17, 1846, A. Dudley Mann, Special Agent of the United States, wrote that "The Grand Duke of Oldenburg, is ready to become a party to the Treaty immediately after an exchange of ratifications transpires with Hanover" (D.S., 14 Special Agents, German States, No. 4); nothing remained for consideration but the form of the declaration; that proposed by the Government of Oldenburg was as follows (*ibid.*, enclosure):

Whereas the Government of the Grand Dutchy of Oldenburgh, already enjoiing all the advantages respecting the navigation which the United States thus bestows up[on] it under a Proclamation of the President thereof, dated . . . . , is desirous of making them permanent for a term of years as well as strengthening the bonds of friendship and good understanding, which so happily subsist, between the two countries, and like the Government of Hanover to use every means in its power to extend the commercial relations between Germany and the United States; accedes by the present declaration to all the stipulations and agrees to observe all the obligations towards the United States, as are required of the Kingdom of Hanover, contained in the treaty entered into between His Majesty the King of Hanover and the Government of the United States of America on the tenth day of June eighteen hundred and forty six, except those, which relate to the Weser- and Stade-tolls in which the Government of the Grand Dutshy of Oldenburgh has no interest and over which it has no control, upon condition however that vessels, built in Oldenburgh and sailing under the flag of Hanover or vessels built in Hanover and sailing under the flag of Oldenburgh shall be regarded as national vessels of that country, under whose flag they sail.

The proclamation mentioned in the foregoing draft is that of September 18, 1830 (4 Statutes at Large, 814–15); and it may be added that in 1844 the Government of Oldenburg had declined to enter into a treaty with the United States on the basis of the earlier treaty with Hanover of May 20, 1840 (Document 92; see D.S., 3 Despatches, Prussia, No. 250, May 8, 1844).

The instructions given to Mann regarding the declaration were under date of January 9, 1847, as follows (D.S., 1 Special Missions, 248–51):

After effecting this [exchange of the ratifications of the treaty with Hanover], you will proceed, with as little delay as possible, in exchanging with the Governments of Oldenburg and the two Mecklenburgs, or such of them as may be disposed to enter into the measure, the Declaration provided for by the 12th Article. For this declaration the accompanying form has been prepared, which you will adhere to substantially. In preparing it, the wishes of the Grand Duke of Oldenburg, as shewn in the draft transmitted with your despatch of the 17th June last, have been complied with, so far as was deemed practicable. This, however, has not extended further than to make the special exception desired by him, of the stipulations respecting the Stade and Weser-tolls, as being inapplicable to Oldenburg. The condition which he desires to have inserted, securing to vessels built in Oldenburg, and sailing under the flag of Hanover, and to vessels built in Hanover and sailing under the flag of Oldenburg, the right to be regarded as national vessels of the country under whose flag they sail, cannot be adopted. Even supposing this to be unobjectionable, it could not be done without creating the necessity of submitting the Declaration to the Senate for its advice and consent, before the measure of making Oldenburg a party to the Treaty could take

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effect. As the Treaty now stands, the mere act "of an official exchange of declarations", is all that is necessary to put it in force with respect to any "one or more of the other States of the Germanic Confederation"; but, by giving their advice and consent to this provision, the Senate have not authorized the introduction of any new stipulation in the Declaration which is to have this effect.

Any such stipulation would necessarily create the necessity above mentioned; and in regard to this particular stipulation,—which would introduce an entirely new feature in our reciprocity treaties,—it is more than questionable whether the consent of the Senate would be given to it. In my despatch of the 12th of August last, I adverted to "unexpected difficuties and delays" which the Treaty had encountered in that Body, and stated that "a portion of the Senators are opposed to Treaties of reciprocity, so far as our indirect trade is concerned". This opposition has manifested itself so very strongly and decidedly as to render it quite problematical how long our Act of 24th May, 1828 [4 Statutes at Large, 308–9], will be allowed to remain in force. Should it be repealed, those States which are now enjoying the advantages offered by it, will of course lose them; and they could be recovered only by means of a Treaty requiring the consent of two-thirds of the Senate. This consideration, if any value be attached to these advantages, cannot fail to have due weight with those States of the Germanic Confederation which have now the opportunity of placing them at once on the secure basis afforded by the 12th Article of the present Treaty.

The form of Declaration transmitted to you implies, as will be perceived, that the disposition of the Government making it has been previously made known to you. This fact might appear in the shape of a Protocol, stating that the Treaty between the United States and Hanover having been communicated to the Government of Oldenburg, &c, it had seen fit to avail itself of the privilege thereby secured. A form for this Protocol will be found among the papers herein enclosed.

They comprise, also a Special Power to exchange the Declaration with Oldenburg and the two Mecklenburgs, together with Letters of Credence to the Minister of Foreign Affairs of those States respectively.

The form of declaration transmitted with the instructions of January 9, 1847, was almost literally the same as that which was signed, except that it contemplated that the Special Agent of the United States should sign first, as he doubtless did in the original delivered to the Government of Oldenburg; similarly, the form of protocol transmitted with those instructions, while not complete, was used, so far as it went, for the wording of the protocol which was signed.

The effect of the declaration was to form a distinct agreement between the Governments of the United States and Oldenburg, separate from that with Hanover; the Hanoverian treaty was modified by excepting the stipulations concerning the tolls on the Elbe and the Weser, as to which Oldenburg had neither interest nor control; otherwise the agreement between the United States and Hanover was adopted as an agreement between the United States and Oldenburg, but *mutatis mutandis;* strictly and properly speaking, the Oldenburg Government did not at all accede *to the treaty with Hanover;* notwithstanding the expression in the declaration regarding "the accession . . . of His Royal Highness the Grand-Duke of Oldenburg for the Grand Duchy of Oldenburg to the Treaty aforesaid", what the declaration did was to effect the accession of the Grand Duchy of Oldenburg, pursuant to Article 12 of the Hanoverian treaty, to "all the advantages and privileges contained in the stipulations of the present treaty", and the conferring by the Grand Duchy of Oldenburg of "similar favors upon the said United States to those conferred by the Kingdom

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of Hanover". Oldenburg did not in any sense become a party, for example, to the agreement relating to duties on imports into Hanover of the produce of the United States (Article 6 of the treaty with Hanover); what Oldenburg did become a party to was a similar agreement regarding imports into Oldenburg. The draft declaration proposed by the Government of Oldenburg was technically superior to the form signed, which was, in substance, that proposed by the Government of the United States.

The Full Powers

The full power given to Mann to exchange the declaration was of the same date as the instructions and was in these terms (D.S., 3 Credences, 190–91):

James K. Polk, President of the United States of America.

To all to whom these presents shall come, Greeting:

Whereas, the twelfth article of the Treaty of Navigation and Commerce between the United States of America and the Kingdom of Hanover, concluded at the City of Hanover on the 10th of June last, and duly ratified by this Government on the 8th instant, is in the following words, to wit:

"The United States agree to extend all the advantages and privileges contained in the stipulations of the present Treaty to one or more of the other States of the Germanic Confederation, which may wish to accede to them, by means of an official exchange of declarations; provided that such State or States shall confer similar favors upon the said United States to those conferred by the Kingdom of Hanover, and observe and be subject to the same conditions, stipulations and obligations":

Now, therefore, Know Ye, That reposing special trust and confidence in the integrity, prudence and ability of A. Dudley Mann, appointed Special Agent of the United States to the Kingdom of Hanover and the Grand Dutchy of Oldenburg, also to the Grand Dutchy of Mecklenburg-Schwerin and to the Grand Dutchy of Mecklenburg-Strelitz, I have invested him with full and all manner of power, for and in the name of the United States, to meet and confer with any person or persons furnished with like powers on the part of His Royal Highness the Grand Duke of Oldenburg, His Royal Highness the Grand Duke of Mecklenburg-Schwerin, and His Royal Highness the Grand Duke of Mecklenburg-Strelitz, respectively, or either of said Sovereigns; and, with the person or persons so empowered, to make the official exchange of declarations whereby those Sovereigns respectively, or either of them, shall be constituted a party or parties to the said Treaty of 10th June, 1846, in fulfilment of the stipulations and provisions of the twelfth article thereof.

In testimony whereof, I have caused the Seal of the United States to be hereunto affixed.

Given under my hand, at the City of Washington, this ninth day
[Seal] of January A.D. 1847; and of the Independence of the said States the Seventy-first.

James K. Polk.

By the President:
James Buchanan,
Secretary of State.

Nothing appears as to the full power of the Plenipotentiary of Oldenburg, other than its mention in the declaration.

Regarding the full powers previously given to Mann, his instructions, the negotiations, and the surrounding circumstances generally, the notes to Document 121 should be consulted.

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Promulgation

This declaration was not submitted to the Senate of the United States; such submission was unnecessary; advice and consent had been given in advance by the resolution regarding the treaty of 1846 with Hanover and the entry into force of that treaty.

No record of a proclamation of this declaration has been found; but it was published at the time in the session laws and in due course in the Statutes at Large (9 Statutes at Large, 868), and also in the press (e.g., Daily National Intelligencer of April 27, 1847, following the proclamation of the treaty with Hanover of June 10, 1846; similarly in Senate Confidential Document No. 5, 30th Congress, 1st session, Regular Confidential Documents, XXIII, 133–58). Mention of the declaration as one of seven treaties of commerce of "the last four years" was made in the lengthy annual message to Congress of December 5, 1848 (Richardson, IV, 629–70, at p. 629).

The Grand Duchy of Oldenburg

The Grand Duchy of Oldenburg was a member of the Germanic Confederation (1815–66), but not, at the time of this agreement, of the Zollverein or Customs Union (see the notes to Document 59); Oldenburg joined the North German Confederation in 1866 and became a State of the German Empire in 1871.

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Treaty Series No. 352
9 Statutes at Large, 902-3
18 *ibid.*, pt. 2, Public Treaties, 747-48

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SWITZERLAND : MAY 18, 1847

Convention Regarding the Disposal of Property and the Succession Thereto, signed at Washington May 18, 1847. Original in French and English.
Submitted to the Senate December 22, 1847. (Message of December 20, 1847.) Resolution of advice and consent April 26, 1848. Ratified by the United States April 29, 1848. Ratified by Switzerland July 2, 1847. Ratifications exchanged at Washington May 3, 1848. Proclaimed May 4, 1848.

Le President des Etats Unis de l'Amérique, et le Directoire Fédéral de la Confédération Suisse, animés du désir d'assurer et d'étendre par une Convention amiable, les rélations hereusement existantes, entre les deux pays, ont nommé, à cet effet, pour leurs Plénipotentiaires—savoir,—le Président des Etats Unis d'Amérique, James Buchanan, Secrétaire d'Etat, des Etats Unis; et le Directoire Fédéral de la Confédération Suisse, A. C. Cazenove, Consul Suisse à Alexandrie; lesquels après l'échange de leurs pleins-pouvoirs trouvés en bonne et due forme, sont convenus des articles suivants, et les ont signés—

The President of the United States of America, and the Federal Directory of the Swiss Confederation, animated by the desire to secure and extend, by an amicable Convention, the relations happily existing between the two countries, have, to this effect, appointed, as their Plenipotentiaries; to wit—the President of the United States of America, James Buchanan, Secretary of State of the United States; and the Federal Directory of the Swiss Confederation, A. C. Cazenove, Swiss Consul at Alexandria; who after the exchange of their full powers, found in good and due form, have agreed upon and signed the following articles—

Article. I.

Les Citoyens de chacune des hautes parties contractantes auront la faculté de disposer de leurs biens personnels, dans la jurisdic-

Article. I.

The citizens of each one of the high contracting parties shall have power to dispose of their personal property, within the juris-

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tion de l'autre, soit par testament, donation, ou de toute autre manière; et leurs héritiers, etant citoyens de l'autre partie, hériteront de leurs dits biens personnels, que ce soit par testament, ou *ab intestato*, et ils pourront en prendre possession, eux-mêmes, ou par le moyen de leurs agens, et en disposer comme ils l'entendront, n'ayant à payer aux Gouvernemens respectifs d'autres droits que ceux auxquels sont soumis en pareil cas les habitans même du pays dans lequel les dits biens se trouvent; dans le cas de l'absence de l'héritier ou des héretiers, il y serait pris par l'autorité, à l'egard des dits biens, le même soin que celui qui pourrait être pris, dans le même cas, pour la conservation des biens d'un natif du même pays, et cela jusqu'à ce que le propriétaire légal ait pu prendre les mésures convenables pour les recueillir; et dans le cas où il s'élèverait une question parmi les prétendans à une succession de savoir à qui les biens doivent appartenir, cette question sera décidée après les lois et par les juges du pays dans lequel les biens se trouvent.

ARTICLE II.

Si, par la mort d'une personne possédant des propriétés foncières sur le territoire de l'une des hautes parties contractantes, ces propriétés venaient, en vertu des lois du pays, ou d'une disposition testamentaire, à échoir à un citoyen

diction of the other, either by testament, donation, or *ab intestato*, or in any other manner; and their heirs, being citizens of the other party, shall inherit all such personal estates, whether by testament, or *ab intestato*, and they may take possession of the same, either personally, or by attorney, and dispose of them as they may think proper, paying, to the respective Governments, no other charges than those to which the inhabitants of the country in which the said property shall be found, would be liable in a similar case; and, in the absence of such heir, or heirs, the same care shall be taken of the property that would be taken, in the like case, for the preservation of the property of a citizen of the same country, until the lawful proprietor shall have had time to take measures for possessing himself of the same, and in case any dispute should arise between claimants to the same succession, as to the property thereof, the question shall be decided according to the laws, and by the Judges, of the country in which the property is situated.

ARTICLE II.

If, by the death of a person owning real property in the territory of one of the high contracting parties, such property should descend, either by the laws of the country, or by testamentary disposition, to a citizen of the other

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de l'autre partie, qui, à cause de sa qualité d'etranger, ne serait pas admis à la possession en nature de ces propriétés, il serait accordé à celui-ci un terme, de pas moins de trois ans, pour vendre ces propriétés, et en retirer et exporter le produit sans difficulté, et sans payer au Gouvernement aucun autre droit de mutation que celui qui, dans un cas analogue, serait dû par un habitant du pays dans lequel les propriétés foncières sont situées.

ARTICLE III.

La présente Convention sera en vigueur pendant douze ans, à dater de ce jour; et au delà de ce terme jusqu'à l'expiration de douze mois aprés que le Gouvernement des Etats Unis, d'une part, ou celui de la Confédération Suisse, de l'autre, aura annoncé à l'autre son intention de le terminer.

Cette Convention sera ratifiée, et les ratifications en seront échangées à Washington, dans le terme de douze mois aprés sa date, ou plutôt si faire se peut.

En foi de quoi les Plénipotentiaires respectifs ont signé la présente Convention, et y ont apposé leurs cachets.

Fait à Washington le dixhuitieme jour du mois de Mai, de l'an de Grace, 1847 et de l'Indépendence des Etats Unis le 71me

[Seal] JAMES BUCHANAN
[Seal] ANT CH^{E} CAZENOVE

party, who, on account of his being an alien, could not be permitted to retain the actual possession of such property, a term of not less than three years shall be allowed to him to dispose of such property, and to collect and withdraw the proceeds thereof, without paying to the Government any other charges than those which, in a similar case, would be paid by an inhabitant of the country in which such real property may be situated.

ARTICLE III.

The present Convention shall be in force for the term of twelve years from the date hereof; and further, until the end of twelve months after the Government of the United States, on the one part, or that of the Swiss Confederation on the other, shall have given notice of its intention of terminating the same.

This Convention shall be ratified and the ratifications shall be exchanged, at Washington, within twelve months after its date, or sooner if possible.

In faith whereof, the respective Plenipotentiaries have signed the present Convention, and have thereunto affixed their seals.

Done at Washington, this eighteenth day of May, A.D., 1847; and of the Independence of the United States the Seventy first.

JAMES BUCHANAN [Seal]
ANT CH^{E} CAZENOVE [Seal]

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NOTES

In the message of President Polk of December 20, 1847, submitting this convention to the Senate, it is spoken of as a convention "for the mutual abolition of the droit d'aubaine and of taxes on emigration" (Executive Journal, VII, 249). The terms of the convention did abolish the *droit d'aubaine*, although that expression is in neither the French nor the English version; but the convention does not deal with taxes on emigration; there are no words in it relating to such taxes; Article 1 treats of the right of disposal of personal property in the one country by the citizen proprietors of the other and the right of succession to such property. Article 2 treats of the succession to real property.

Articles 1 and 2 of this convention are very similar in their provisions to articles contained in various conventions with German states negotiated at about this time (cf., for example, Articles 2–5 of the convention with the Grand Duchy of Hesse of March 26, 1844, Document 106); but in those other conventions taxes on emigration as well as the *droit d'aubaine* are expressly mentioned and abolished (Documents 106, 107, 111, 115, and 120). Some observations regarding the *droit d'aubaine* will be found in the notes to Document 106.

This was the first convention between the United States and the Swiss Confederation to enter into force; two other conventions had previously been signed; one, under date of March 6, 1835, with provisions differing but little from those of this convention, was rejected by the Senate (Executive Journal, IV, 559) for reasons which remain obscure (see Holt, Treaties Defeated by the Senate, 54–57); the extradition convention of September 15, 1846, failed following amendment by the Senate (Executive Journal, VII, 237).

The File Papers

The signed original of the convention is written in French and English, with the French in the left columns. The other papers in the treaty file are in customary form; they include the attested resolution of the Senate of April 26, 1848, the duplicate United States instrument of ratification of April 29, the certificate of the exchange of ratifications at Washington on May 3, which is written in English, and the original proclamation of May 4, 1848.

The instrument of ratification on the part of the Swiss Confederation, of July 2, 1847, is written in French. It includes both versions of the convention, the French in the left columns. In each version the Federal Directory is named first and the copied signature of Antoine Charles Cazenove, consul of the Swiss Confederation at Alexandria, Virginia, appears before that of James Buchanan, Secretary of State.

The following is from a letter of Professor William Rappard, of Geneva, to the editor, May 20, 1933:

> At the date of the ratification Switzerland was still a very loose confederacy of states. Its executive head was always the head of the Government of the Canton in which the Diet was meeting. In 1847 that was Berne, whose Government was

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presided over by Johann-Ulrich Ochsenbein (1811–90). The "Chancelier d'Etat de la Confédération" at that time was a gentleman belonging to the Lucerne aristocracy who bore the following name: Josef-Franz von Sales-Johann Baptist-Karl-Niklaus von Flüe Am Rhyn, or Amrhyn.

The form of the Swiss instrument of ratification is accordingly of particular interest. The seal thereto affixed (impressed on a wafer) has "in the center the red shield of the Confederation with the white cross, as an armorial symbol of the Confederation as a whole; around this a simple Gothic ornamentation of circular form; outside this the inscription: SCHWEIZERISCHE EIDGENOSSENSCHAFT, with the year, MDCCCXV; in an outer circle the arms of all the twenty-two Cantons in round fields according to their order of rank in the Confederation; and the whole enclosed by a simple wreath of small, overlapping leaves" (Offizielle Sammlung der das schweizerische Staatsrecht betreffenden Aktenstücke, II, 3, translation). The text of the ratification follows:

[Translation]

NOUS PRÉSIDENT et Conseil d'Etat du Canton de Berne, Directoire actuel de la Confédération Suisse, faisons savoir par les présentes:

WE, PRESIDENT and Council of State of the Canton of Bern, Directory at this time of the Swiss Confederation, make known by these presents:

Que la Convention conclue et signée le dix-huit Mai mil huit cent quarante sept à Washington, au nom des Etats composant la Confédération Suisse, par Monsieur A. C. Cazenove, Consul Suisse à Alexandrie près Washington, muni des pleins-pouvoirs du Directoire fédéral; et au nom des Etats-Unis de l'Amérique du Nord, par Monsieur James Buchanan, Secrétaire d'Etat des Etats-Unis, muni des pleins-pouvoirs de Son Excellence Monsieur le Président de ces Etats, concernant la libre exportation des biens entre les Etats de la Confédération Suisse et les Etats-Unis de l'Amérique du Nord, Convention dont la teneur suit:

That the convention concluded and signed on May 18, 1847, at Washington, in the name of the States composing the Swiss Confederation, by Mr. A. C. Cazenove, Swiss consul at Alexandria, near Washington, furnished with full powers by the Federal Directory, and in the name of the United States of North America by Mr. James Buchanan, Secretary of State of the United States, furnished with full powers by His Excellency the President of those States, regarding the free exportation of property between the States of the Swiss Confederation and the United States of North America, convention whereof the wording follows:

[Here follows the text of the convention in French and English]

est ratifiée ensuite des déclarations intervenues des Etats de la Confédération Suisse, consignées aux Procès-verbaux des Diètes de 1834, 1835 et 1836.

En conséquence Nous la déclarons sanctionnée et ratifiée par les Etats de la Confédération Suisse et promettons en leur nom qu'elle sera fidèlement et religieusement observée.

En foi de quoi les présentes ont été signées par le Président du Conseil d'Etat du Canton de Berne, Président de la Diète et du Directoire fédéral,

is ratified following declarations entered into by the States of the Swiss Confederation, recorded in the minutes of the Diets of 1834, 1835, and 1836.

Consequently we declare the same sanctioned and ratified by the States of the Swiss Confederation and promise in their name that it will be faithfully and religiously observed.

In faith whereof these presents have been signed by the President of the Council of State of the Canton of Bern, President of the Diet and of

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contresignées par le Chancelier d'Etat de la Confédération et munies du Grand Sceau de la Confédération à Berne le deuxième Juillet mil huit cent quarante sept. (2 Juillet 1847).

Le Président du Conseil d'Etat du Canton de Berne, Président de la Diète et du Directoire de la Confédération Suisse:

[Seal] OCHSENBEIN.

Le Chancelier d'Etat de la Confédération:

AM RHYN

the Federal Directory, countersigned by the Chancellor of State of the Confederation, and sealed with the great seal of the Confederation at Bern on the second of July, one thousand eight hundred and forty-seven (July 2, 1847).

The President and Council of State of the Canton of Bern, President of the Diet and of the Directory of the Swiss Confederation:

[Seal] OCHSENBEIN.

The Chancellor of State of the Confederation:

AM RHYN

The wording of the foregoing instrument shows that the ratification of this convention by Switzerland did not follow consideration of the text thereof in the Swiss Diet, but was based on declarations of the Cantons made in 1834, 1835, and 1836; those declarations related to the convention signed on March 6, 1835, at Paris, by the respective diplomatic representatives there of the two countries, Edward Livingston, Minister of the United States, and Georges de Tschann, Chargé d'Affaires of the Swiss Confederation (D.S., Unperfected M3). Indeed, the convention of 1835 was ratified by the Swiss Confederation in advance of its signature, as the full power to De Tschann (dated November 20, 1834), reciting previous approval on the part of the majority of the Cantons, authorized him to negotiate, conclude, and sign, in conformity with his instructions, a convention which would not require subsequent ratification ("Sans Se réserver de ratification ultérieure"; *ibid.*); and the convention itself includes the following paragraph:

> The present convention shall have its full force when ratified by the President and Senate of the United States the articles thereof having been submitted to the Vorort of the swiss Confederation, and received their previous confirmation and consent, as appears by the full powers given to their plenipotentiary.

It appears that on July 30, 1834, the terms of the then proposed convention (of March 6, 1835) were approved by the representatives in the Swiss Diet of a large majority of the Cantons, in part unconditionally, in part subject to ratification; that on August 18, 1835, the definitive assent of all but one (Glarus) of the twenty-two Cantons was recorded; and that on July 15, 1836, the Canton of Glarus assented (Repertorium der Abschiede der eidgenössischen Tagsazungen aus den Jahren 1814 bis 1848, II, 145–46).

The only substantial difference between the two articles of the convention of 1835 and Articles 1 and 2 of this convention of 1847, is in the term for disposal allowed to the alien heir or devisee by Article 2, which, in the convention of 1835, is "the term prescribed by the laws of the said state or Canton, or if no such term shall be prescribed a reasonable time"; but in the convention of 1835 there is no provision for denunciation or termination (cf. Article 3 of this convention).

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The Full Powers

Nothing appears as to the full power of the Swiss Plenipotentiary other than its mention in the preamble of the convention, in the Swiss instrument of ratification, and in two of the notes of Cazenove (D.S., 3 Notes from Foreign Consuls, March 5 and 7, 1846); but the original full powers were not exchanged in this case, for that given to Secretary of State Buchanan under date of May 18, 1847 (the date of the convention), is in the treaty file. The document is in customary form, giving authority to treat and to negotiate a convention "relative to the succession to the estates, real and personal, of the citizens of either of the contracting parties dying within the jurisdiction of the other party, and of all matters and subjects connected therewith, which may be interesting to the two Governments" (D.S., 3 Credences, 204).

The Negotiations

There is very little of record regarding the negotiations leading up to this convention, which were conducted in Washington. It appears that no papers accompanied the convention when it was submitted to the Senate (Executive Journal, VII, 249). The archives of the Department of State include some ten notes from Cazenove to Buchanan with regard to this convention, but copies of only two notes from Buchanan to Cazenove have been found.

Proposal of negotiations for a commercial treaty between the United States and the Swiss Confederation was made by Cazenove, pursuant to instructions from his Government, in a conversation with Buchanan of July 24, 1845, and in a note of the following day (D.S., 2 Notes from Foreign Consuls). In his answering note of July 28, Buchanan, referring to the convention of March 6, 1835, between the United States and the Swiss Confederation, which failed to go into force, suggested that the negotiations include the subject of succession to property, which is dealt with in this convention of May 18, 1847. That note of Buchanan reads in substance as follows (D.S., 6 Notes to German States, 114–16):

I have received yours of the 25th Instant, and hasten to give it an answer.

I have consulted the President upon the subject of it, who cordially reciprocates the desire expressed by you, on behalf of the Government of the Swiss confederation, to draw closer the ties of friendship now so happily subsisting between the two Republics, by means of Treaty stipulations. He has accordingly requested me to inform you, unofficially, that whenever you may be invested with full powers for that purpose, he can at present perceive no objection to the conclusion of a Treaty, between the two Powers, on the basis which you have suggested;—that is to say, that the products and manufactures of the United States shall be received into Switzerland entirely free from duty; provided the products and manufactures of Switzerland shall pay no higher duty when imported into the United States, than those of the most favored nation.

I have examined Mr Livingston's Treaty of 6th March, 1835, to which I referred in our conversation, and which was rejected by the Senate. It seems to me to be equally desirable for both parties to adopt a similar Convention. So many of the citizens of Switzerland have emigrated to the United States, that both real and personal estates in the one Country, must often descend to the Citizens of the other. The rights of these respective citizens can be best secured by Treaty.

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Indeed, constituted as both Republics are, of separate sovereign States, varying from each other in their domestic institutions, it is almost indispensable to the security of the rights of their respective citizens, that these should be recorded and regulated by a Treaty, which would render the rule uniform throughout the whole. I trust, therefore, that your full powers may embrace this object.

I would suggest the following as the form of an article to embrace the case,— which is copied from our late Treaties with other nations, on this important subject. [Here follows the English version of Article 8 of the treaty of 1836 with the Peru-Bolivian Confederation (Document 82).]

Most of the notes of Cazenove are brief and unimportant; the only one necessary to quote is that of March 7, 1846 (D.S., 3 Notes from Foreign Consuls):

Having had yesterday the favor of an audience with you, I had the honor to inform you, that I had received from the Government of Switzerland, full powers to negotiate with that of the United States, a Commercial Treaty, comprising provisions for the abolition of the Droit d'aubaine & la Traite foraine, or for the latter subject, separate from the former; which the Government of Switzerland prefers to being united, because the latter requires the assent in the Diet of each Canton, whereas the assent of only 12 Cantons binds the whole of them as to the former. I then mentioned, that having acquainted you with the preferrence of Switzerland in that respect, she still leaves to the United States to determine the question of their being made the subject of one [or] of two Conventions.

It became at the same time my duty to apprise you that however *trifling* and indeed *nominal* are the duties of importation in Switzerland (being rather those of *Controle* than those of *Revenue* I had been instructed to state that she is not willing to relinquish the priviledge of exercising that controle for ten years (or for the time that may be fixed upon for the duration of the proposed treaty) and to receive all the articles of the produce & manufacture of the United States entirely free of duty, while she would receive no other equivalent than being placed on the footing of the most favor'd nations. For it might happen that during the continuance of the treaty, the United States might find it desirable to raise their tarif upon some of the articles of the manufacture of Switzerland, which though applying equaly to those of similar articles from other nations, might in fact be prohibitory as to her.

As you were pleased in that audience to desire me to address you a note on the subject, I beg leave therefore to enclose you herewith a Copy of what Switzerland proposes as the subject of two separate treaties, or of the two united into one; namely that of commerce. If the latter (letter A) should be adopted, then the other (letter B) would be unnecessary, and article N° 3 which is confirmatory & explanatory of N° 2 to be expunged, if objected to by the United States; while article N° 4 of the same treaty is to be dispensed with if the treaty (letter B) respecting the Droit d'aubaine & la Traite foraine is agreed on.

While Switzerland has there indicated the stipulations that would be agreable to her, she would be ready to accept others of similar import if more agreable to the United States. She has adopted that of letter B relative to the Droit d'aubaine & la Traite foraine, on act of its conformity to the Convention signed in March 1835 by Mr Livingston & Mr de Tschann.

Articles N° 1, 2, 5 & 6 of the Treaty of Commerce proposed by Switzerland are almost literaly the same as articles N° 1, 15, 19 & 20 of the treaty concluded between the United States and Belgium 10th Novr 1845 [Document 116.]

Article N° 4 is also in like manner of similar tenure with the first half of article 10 [14] of the treaty concluded 1st May 1828 between the United States and Prussia [Document 62].

I would beg leave to remark here, that the various treaties concluded between the United States and other powers being based on the principle of reciprocity, Switzerland hopes and expects that a less favorable disposition will not be shewn by the United States towards the elder Sister Republic, who not only offers to treat them at all times upon the footing of the most favored nations, but already now receives the products & manufactures of the United States at almost nominal

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duties, a circumstance which she certainly has reason to expect will not be overlooked by the United States. Otherwise it would be in fact placing Switzerland on a worse footing than other nations for her having taken the initiative in receiving the products & manufactures of the United States, on an *infinitely* better footing than those nations do, and although its immediate and necessary tendency is, to induce them, to approximate themselves in that respect as far as they can to the example set them by Switzerland.

There is not besides the least probability if even chance, of these nations placing hereafter the United States on the same footing that Switzerland does; as will be seen by what she now receives upon the great articles of export of the United States.

Cotton and Tobacco in the leaf are now taxed by her as a Federal duty 1 batz (equal to 3 sols or sous of France) per quintal and manufactured tobacco 2 batz per quintal, and several of the Cantons receive also a small duty on the same articles. That of Berne for instance is 2½ batz per quintal on Cottonwool and that on tobacco is somewhat higher in several cantons; principaly those of Tessin, Berne, Vaud & Grisons.

There can not be the shadow of probability, that after Switzerland has done so much towards establishing by her own example the system of free trade, she will ever be induced to raise her duties on importations. Now particularly that England and other great commercial nations are daily viewing it more and more favorably.

With the hope therefore that the United States will feel disposed to respond to the desire of so worthy a Sister Republic as that of Switzerland of strengthening and drawing closer the ties now so happily existing between the two Nations by the proposed Treaty of Commerce in which the abolition du Droit d'aubaine and la Traite foraine will be included, or each subject treated in a separate Convention, I emprove with great pleasure this opportunity of reiterating to you the assurance of my great respect and consideration.

The two projects presented by Cazenove and which were enclosures to the foregoing note of March 7, 1846, were written in French. The one which was adopted was that referred to as "letter B", in three articles. Article 1 of that draft in all essentials corresponds to Articles 1 and 2 of this convention. Articles 2 and 3 of the draft contain clauses of duration and ratification.

The other project of Cazenove, designated as "letter A", was a draft of a treaty of commerce in seven articles, including as Article 4 substantially the same provisions as those of Articles 1 and 2 of this convention; the discussions of the proposed treaty of commerce which ensued are not of record in the archives of the Department of State; no agreement in that regard was reached; and more than a year elapsed before the signing of the convention here considered.

The "Traite Foraine"

The expression "*traite foraine*" used by Cazenove in his note of March 7, 1846, is in itself broad enough to include either an import or an export duty or levy (see Littré, *sub "forain"*, where it is said that the present equivalent would be "droits de douane"). Here the words are to be understood in the more limited sense of a levy upon the transmittal abroad of the succession or of the proceeds thereof.

It will be observed that in the text of the convention neither "*droit d'aubaine*" nor "*traite foraine*" appears; and neither of those

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two expressions is found in the similar convention between the United States and Switzerland signed at Paris on March 6, 1835 (which did not go into force); that convention (preamble) speaks of the contracting parties "being desirous of conferring the right of succeeding to estates accrueing to the Citizens of one of the parties by the Death of the Citizens of the other"; the full power to the Swiss Plenipotentiary for that convention gives as its subject the reciprocal abolition of the "traite foraine"; Professor Rappard writes on the point as follows (letter of May 20, 1933):

> The two expressions and certainly *"traite foraine"* were still commonly used in Switzerland in the first half of the nineteenth century, whereas I believe that in France the Revolution did away with them. Not only were these terms used, but they referred to rights which had been abolished as between cantons in 1798 but which the reactionaries of the restoration period still wished to reestablish.

Professor Rappard also refers in this connection to two interesting articles in Dictionnaire historique et biographique de la Suisse (I, 453, and VI, 652–54), from which the following brief excerpts are quoted (translation):

> The *"aubaine"* (German, *Fremdlingsrecht*), which is sometimes confused with the *"traite foraine"*, was the right by virtue whereof the sovereign received the succession of a foreigner who died within his territories. Formerly the right of disposing of their property by will was denied to foreigners, so that if they died without legitimate issue, their succession reverted, in whole or in part, to the state. The term "foreigner" did not have the same signification as now; as between cantons, one was a "foreigner"; however, the cantons had, *inter se*, by special treaties, renounced the *droit d'aubaine*.
>
> The *"traite foraine"* (German, *Abzug*) was the tax payable by a citizen (*bourgeois*) on his property (*fortune*) when he renounced his citizenship (*droit de bourgeoisie*) or if he left his country (*patrie*). It was also the levy imposed upon the estate (*fortune*), personal or real, at the time when, because of inheritance, it passed from one country (*pays*) to another or from one city to another. At the outset this succession duty extended to 20 percent; afterwards the amount was determined by ordinances and treaties according to the needs of the country.

The *"droit de mutation"* of the French version of Article 2, which has no verbal equivalent in the English (which reads "charges"), might be rendered as transfer tax or duty.

ARTICLE 3

The provisions of this convention were superseded by the convention with Switzerland of November 25, 1850 (Document 144; see particularly Articles 5 and 6 of that convention).

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Treaty Series No. 199
9 Statutes at Large, 910–21
18 *ibid.*, pt. 2, Public Treaties, 467–71

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MECKLENBURG-SCHWERIN : DECEMBER 9, 1847

Declaration of Accession to the Stipulations and Provisions of the Treaty with Hanover of June 10, 1846 (Document 121), signed at Schwerin December 9, 1847. Original in English and German.
Declarations exchanged, subject to ratification by the United States, at Schwerin December 9, 1847. Submitted to the Senate January 25, 1848. (Message of January 21, 1848.) Resolution of advice and consent May 18, 1848. Ratified by the United States May 20, 1848. Not subject to subsequent ratification by Mecklenburg-Schwerin. Ratification of the United States delivered June 27, 1848, and acknowledged June 29, 1848. Proclaimed August 2, 1848.

Declaration.

Whereas a treaty [1] of commerce and navigation between the United States of America and His Majesty the King of Hanover was concluded at Hanover on the tenth day of June One thousand eight-hundred and forty-six, by the Plenipotentiaries of the contracting Parties, and was subsequently duly ratified on the part of both Governments;

And Whereas by the terms of the twelfth Article of the same the United States agree to extend all the advantages and privileges contained in the stipulations of the said treaty, to one or more of the other States of the Germanic confederation which may wish to accede to them by means of an official exchange of declarations,

[1] Document 121.

Erklärung.

Da ein Handels- und Schiffahrts-Vertrag [1] zwischen den Vereinigten Staaten Amerika's und Seiner Majestät dem Könige von Hannover am zehnten Juni achtzehnhundert und sechs und vierzig zu Hannover durch die Bevollmächtigten der contrahirenden Theile abgeschlossen und später von Seiten beider Regierungen gehörig ratificirt ist; und da nach den Bestimmungen des zwölften Artikels desselben die Vereinigten Staaten sich bereit erklären, alle in den Bestimmungen des gedachten Vertrags enthaltenen Vortheile und Privilegien auf einen oder mehrere der andern Staaten des deutschen Bundes auszudehnen, welche denselben beitreten mittelst einer amtlichen Auswechslung

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provided, that such State or States shall confer similar favors upon the United States to those conferred by the Kingdom of Hanover, and observe and be subject to the same conditions, stipulations and obligations;

And whereas the Government of His Royal Highness the Grand-Duke of Mecklenburg-Schwerin has signified its desire to accede to the said treaty and to all the stipulations and provisions therein contained, as far as the same are or may by applicable to the two countries, and to become a party thereto and has expressed its readiness to confer similar favours upon the United States as an equivalent in all respects to those conferred by the Kingdom of Hanover.

And Whereas the Government of the Grand-Duchy of Mecklenburg-Schwerin in its anxiety to avoid the possibility of a misconception hereafter of the nature and extent of the favours differing essentially from those of Hanover, which it consents to bestow upon the United States, as well as for its own faithful observance of all the provisions of the said treaty, wishes the stipulations, conditions and obligations, imposed upon it; as also those which rest upon the United States, as explicitly stated, word for word in the

von Erklärungen, vorausgesetzt, daß der oder die Staaten dieser Art ähnliche Vergünstigungen, wie sie vom Königreiche Hannover ertheilt sind, den Vereinigten Staaten ertheilen und den nämlichen Bedingungen, Stipulationen und Verpflichtungen nachkommen und sich unterziehen;

und da die Regierung Seiner Königlichen Hoheit des Großherzogs von Mecklenburg-Schwerin den Wunsch ausgedrückt hat, dem genannten Vertrage und allen in demselben enthaltenen Stipulationen und Bedingungen, soweit dieselben auf die beiden Länder anwendbar sind oder sein mögen, beizutreten und Theilhaber jenes Vertrags zu werden und da es seine Bereitwilligkeit zu erkennen gegeben hat, ähnliche Begünstigungen den Vereinigten Staaten zuzugestehen, welche den vom Königreiche Hannover gemachten völlig gleichstehen;

da ferner die Regierung des Großherzogthums Mecklenburg Schwerin, aus Vorsorge, um die Möglichkeit eines spätern Mißverständnisses über die Natur und die Ausdehnung der wesentlich von denen Hannovers abweichenden Vergünstigungen zu vermeiden, welche dasselbe den Vereinigten Staaten zu gewähren gesonnen ist, daß sowohl die Stipulationen, bedingungen u. Verpflichtungen, welche ihm auferlegt sind, um selbst die bestimmungen des genannten Vertrags getreu erfüllen zu können, als auch diejenigen,

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English and German languages as contained in the following Articles:

ART: 1.

The High Contracting Parties agree, that whatever kind of produce, manufacture or merchandise of any foreign country can be, from time to time lawfully imported into the United States in their own vessels, may also be imported in the vessels of the Grand Duchy of Mecklenburg-Schwerin, and no higher or other duties upon the tonnage or cargo of the vessel shall be levied or collected whether the importation be made in a vessel of the United States or in a vessel of Mecklenburg-Schwerin.

And in like manner whatever kind of produce, manufacture or merchandise of any foreign country can be, from time to time lawfully imported into the Grand-Duchy of Mecklenburg-Schwerin in its own vessels may also be imported in vessels of the United States; and no higher or other duties upon the tonnage or cargo of the vessel shall be levied or collected, whether the importation be made in vessels of the one party or the other.

welche auf den Vereinigten Staaten ruhen, besonders festgestellt werden und Wort für Wort in Englischer und Deutscher Sprache in den folgenden Artikeln angegeben werden.

ART: 1.

Die hohen contrahirenden Theile kommen überein, daß jedwede Art von Producten, Manufacturen oder Waaren irgend eines fremden Landes, welche zu jeder Zeit in den Vereinigten Staaten in deren Schiffen gesetzlich eingeführt werden darf, auch in den Schiffen des Großherzogthums Mecklenburg-Schwerin soll eingeführt werden dürfen, und daß keine höhere oder andere Abgaben von dem Tonnengehalte oder der Ladung des Schiffs, es mag die Einfuhr in einem Schiffe der Vereinigten Staaten oder in einem Mecklenburg-Schwerinschen geschehen, erhoben werden soll.

In gleicher Weise soll jedwede Art von Producten, Manufacturen oder Waaren irgend eines fremden Landes, welche je zur Zeit in das Großherzogthum Mecklenburg-Schwerin in dessen eigenen Schiffen gesetzlich eingeführt werden darf, auch in Schiffen der Vereinigten Staaten eingeführt werden dürfen, und sollen keine höheren oder andere Abgaben von dem Tonnengehalte oder der Ladung des Schiffs, es mag die Einfuhr in Schiffen des einen oder des andern Theils geschehen, erhoben werden.

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Whatever may be lawfully exported or reexported by one party in its own vessels to any foreign country, may in like manner be exported or reexported in the vessels of the other. And the same duties, bounties and drawbacks shall be collected and allowed, whether such exportation or reexportation be made in vessels of the one party or the other.

Nor shall higher or other charges of any kind be imposed in the ports of one party on vessels of the other, than are or shall be payable in the same ports by national vessels.

Alles, was von dem einem Theile in dessen eigenen Schiffen nach irgend einem fremden Lande gesetzlich ausgeführt oder wieder ausgeführt werden darf, soll in gleicher Weise auch in Schiffen des andern Theils ausgeführt oder wieder ausgeführt werden dürfen; und dieselben Abgaben, Vergütungen oder Rückzahlungen sollen gehoben oder bewilligt werden, es mag die derartige Ausfuhr oder Wiederausfuhr in Schiffen des einen oder des andern Theils geschehen; auch sollen keine höheren oder andere Abgaben irgend einer Art in den Häfen des einen Theils den Schiffen des andern Theils auferlegt werden, als welche in denselben Häfen von den einheimischen Schiffen zu entrichten sind oder sein werden.

ART: 2.

The preceeding article is not applicable to the coasting trade and navigation of the High Contracting Parties, which are respectively reserved by each exclusively to its own subjects or citizens.

ART: 2.

Der vorhergehende Artikel ist nicht anwendbar auf den Küstenhandel und die Küstenfahrt der hohen contrahirenden Theile, welche beiderseits ihren eigenen Unterthanen oder Bürgern ausschließlich vorbehalten werden.

ART: 3.

No priority or preference shall be given by either of the Contracting Parties, nor by any company, corporation or agent acting on their behalf, or under their authority in the purchase of any article of commerce lawfully imported, on account of or in refer-

ART: 3.

Von keinem der contrahirenden Theile, noch von, in deren Namen oder unter deren Autorität handelnden Gesellschaften, Korporationen oder Agenten soll, bei dem Ankaufe irgend eines gesetzlich eingeführten Handelsartikels wegen oder bezüglich der Natio-

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ence to the national character of the vessel, whether it be of the one Party or of the other, in which such article was imported.

ART: 4.

The ancient and barbarous right to wrecks of the sea shall remain entirely abolished with respect to the property belonging to the subjects or citizens of the High Contracting Parties.

When any vessel of either Party shall be wrecked, stranded or otherwise damaged on the coasts, or within the dominions of the other, their respective citizens or subjects shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the accident happens.

They shall be liable to pay the same charges and dues of salvage as the said inhabitants would be liable to pay in a like case.

If the operations of repair shall require that the whole, or any part of the cargo be unloaded, they shall pay no duties of custom, charges or fees, on the part which they shall reload and carry away, except such as are payable in the like case, by national vessels.

nalität des Schiffs, in welchem ein solcher Artikel eingeführt worden, es mag dem einem oder dem andern Theile angehören, ein Vorrecht, noch Vorzug gegeben werden.

ART: 4.

Das alte und barbarische Strandrecht soll rücksichtlich des den Unterthanen oder Bürgern der hohen contrahirenden Theile gehörenden Eigenthums gänzlich aufgehoben bleiben.

Wenn ein Schiff des einen Theils an den Küsten oder innerhalb der Besitzungen des andern Theils Schiffbruch erlitten hat, gestrandet oder sonst beschädigt ist, so sollen die resp. Bürger oder Unterthanen sowohl für sich, als für ihre Schiffe und Sachen den nemlichen Beistand erhalten, welcher den Einwohnern des Landes, wo der Unfall sich ereignet, gebührt haben würde.

Dieselben sollen gehalten sein, dieselben Abgaben und Bergelöhne zu entrichten, welche die besagten Einwohner in einem gleichen Falle zu zahlen schuldig wären.

Wenn die Ausbesserungsarbeiten erforderlich machen, daß die Ladung ganz oder zum Theil gelöscht werde, so sollen sie von demjenigen, was sie wieder einladen und wegführen, keine Zollabgaben, Auflagen oder Gebühren zahlen, ausser solchen, welche in gleichem Falle von den einheimischen Schiffen zu entrichten sind.

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It is nevertheless understood, that if, whilst the vessel is under repair, the cargo shall be unladen, and kept in a place of deposite destined to receive goods, the duties on which have not been paid, the cargo shall be liable to the charges and fees lawfully, due to the keepers of such warehouse.

ART: 5.

The privileges secured by the present treaty to the respective vessels of the High Contracting Parties shall only extend to such as are built within their respective territories, or lawfully condemned as prizes of war, or adjudged to be forfeited for a breach of the municipal laws of either of the High Contracting Parties and belonging wholly to their subjects or citizens. It is further stipulated, that vessels of the Grand-Duchy of Mecklenburg-Schwerin may select their crews from any of the states of the Germanic Confederation, provided that the master of each be a subject of the Grand-Duchy of Mecklenburg-Schwerin.

ART: 6.

No higher or other duties shall be imposed on the importation into the United States of any articles, the growth, produce or manufacture of the Grand-Duchy of Mecklenburg-Schwerin, or of its fisheries, and no higher or other

Es versteht sich jedoch, daß, wenn, während das Schiff ausgebessert wird, die Ladung gelöscht und in einer Niederlage für unversteuerte Güter aufbewahrt wird, die Ladung denjenigen Abgaben und Gebühren unterliegen soll, welche den Inhabern solcher Niederlagen gesetzlich zukommen.

ART: 5.

Die durch gegenwärtigen Vertrag den respectiven Schiffen der hohen contrahirenden Theile zugesicherten Privilegien sollen sich nur auf solche Schiffe erstrecken, welche innerhalb ihrer respectiven Gebiete erbauet, oder gesetzlich als Kriegsbeute condemnirt, oder wegen Bruchs der Municipalgesetze des einen oder des andern der hohen contrahirenden Theile für confiscirt erklärt sind und welche ihren Unterthanen oder Bürgern ganz gehören. Es wird ferner stipulirt, daß Schiffe des Großherzogthums Mecklenburg-Schwerin ihre Mannschaften aus allen Staaten des deutschen Bundes wählen dürfen, sofern nur der Capitain eines jeden Schiffs Unterthan des Großherzogthums Mecklenburg-Schwerin ist.

ART: 6.

Es sollen keine höheren oder andere Abgaben auf die Einfuhr in die Vereinigten Staaten von Artikeln, welche Erzeugnisse des Bodens oder des Gewerbfleisses des Großherzogthums Mecklenburg-Schwerin oder seiner Fische-

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duties shall be imposed on the importation into the Grand-Duchy of Mecklenburg-Schwerin of any articles, the growth, produce and manufacture of the United States and of their fisheries, than are or shall be payable on the like articles being the growth, produce or manufacture of any other foreign country or of its fisheries.

No higher or other duties and charges shall be imposed in the United States on the exportation of any articles to the Grand-Duchy of Mecklenburg-Schwerin, or in Mecklenburg-Schwerin on the exportation of any articles to the United States, than such as are or shall be payable on the exportation of the like articles to any other foreign country.

No prohibition shall be imposed on the importation or exportation of any articles, the growth, produce or manufacture of the Grand-Duchy of Mecklenburg-Schwerin or of its fisheries or of the United States or their fisheries from or to the ports of said Grand-Duchy or of the said United States, which shall not equally extend to all other powers and states.

reien sind, und keine höheren oder andere Abgaben auf die Einfuhr in das Großherzogthum Mecklenburg-Schwerin von Artikeln, welche Erzeugnisse des Bodens und des Gewerbfleisses der Vereinigten Staaten und ihrer Fischereien sind, gelegt werden, als von den gleichen Artikeln, welche Erzeugnisse des Bodens oder des Gewerbfleisses irgend eines andern fremden Landes oder seiner Fischereien sind, zu entrichten sind oder sein werden.

Es sollen keine höheren oder andere Abgaben und Abgiften in den Vereinigten Staaten auf die Ausfuhr irgend eines Artikels nach dem Großherzogthum Mecklenburg-Schwerin noch in Mecklenburg-Schwerin auf die Ausfuhr irgend eines Artikels nach den Vereinigten Staaten gelegt werden, als diejenigen, welche bei der Ausfuhr der gleichen Artikel nach irgend einem andern fremden Lande zu entrichten sind oder sein werden.

Es soll auf die Einfuhr oder Ausfuhr irgend eines Artikels, welcher Erzeugnisse des Bodens oder des Gewerbfleisses des Großherzogthums Mecklenburg-Schwerin oder seiner Fischereien, oder der Vereinigten Staaten oder ihrer Fischereien sind, aus oder nach den Häfen des besagten Großherzogthums oder der besagten Vereinigten Staaten, kein Verbot gelegt werden, welches nicht ebenfalls auf alle andern Mächte und Staaten sich erstreckt.

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ART. 7.

The High Contracting Parties engage mutually not to grant any particular favour to other nations in respect of navigation and duties of customs, which shall not immediately become common to the Other Party, who shall enjoy the same freely, if the concession was freely made, or on allowing a compensation as near as possible, if the concession was conditional.

ART: 7.

Die hohen contrahirenden Theile verpflichten sich gegenseitig, andern Nationen in Ansehung der Schiffahrt und der Zollabgaben keine besondere Begünstigung zu verleihen, die nicht sofort auch dem andern Theile zu Gute kommt, welcher dieselbe unentgeltlich genießen soll, wenn die Verleihung unentgeltlich erfolgt war, oder gegen Bewilligung einer möglichst gleichkommenden Vergütung, wenn die Verleihung gegen Bedingungen geschah.

ART 8.

In order to augment by all the means at its bestowal the commercial relations between the United States and Germany the Grand-Duchy of Mecklenburg-Schwerin agrees—subject to the reservation in Article eleventh, to abolish the import-duty on raw cotton and Paddy, or rice in the husk, the produce of the United States; to levy no higher import-duty upon leaves, stems or strips of tobacco, imported in hogsheads or casks, than One Thaler and two Schillings for one hundred pounds Hamburg weight (equal to seventy Cents United States currency and weight), to lay no higher import-Duty upon rice imported in tierces or half tierces than twenty-five schillings for one hundred pounds Hamburg weight (equal to thirty-seven and a half Cents United States currency and weight), to lay no higher Duty upon whale-oil,

ART: 8.

Um durch alle zu seiner Verfügung stehenden Mittel die Handelsbeziehungen zwischen den Vereinigten Staaten und Deutschland zu vermehren, versteht das Großherzogthum Mecklenburg-Schwerin, unter dem Vorbehalte im Artikel eilf, sich dazu, die Eingangsabgabe auf rohe Baumwolle und Paddy /:ungeschälten Reis:/ Producte der Vereinigten Staaten, aufzuheben; den Eingangszoll auf Tabacks-Blätter, Stengel oder Streifen, wenn sie in hogsheads oder Fässern eingeführt werden, nicht höher zu stellen, als zu Einem Thaler und zwei Schillingen für hundert Pfund Hamburgisches Gewicht /:gleich siebenzig Cents nach dem Gelde und Gewicht der Vereinigten Staaten:/ keinen höhern Eingangszoll auf Reis, wenn er in ganzen oder halben Tonnen /:Tierces:/ eingeführt wird, zu legen, als

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imported in Casks or Barrels, than twelve and a half Schillings per hundred pounds Hamburg weight (equal to eighteen and three quarters Cents United States currency and weight).

The Grand-Duchy of Mecklenburg-Schwerin further agrees to levy no higher Transit-duty on the afore mentioned articles in their movement on the Berlin-Hamburg rail-road, than two Schillings per hundred pounds Hamburg weight (equal to three Cents United States currency and weight) and to levy no Transit-Duty on the above mentioned articles when conveyed through the ports of the country.

It is understood however, that nothing herein contained shall prohibit the levying of a duty sufficient for control, which in no instance shall exceed on the two articles imported duty-free or those on transit one schilling per hundred Pounds Hamburg weight (equal to One Cent and a half United States Currency and Weight).

fünf und zwanzig Schillinge für hundert Pfund Hamburgisches Gewicht /:gleich sieben und dreissig und ein halb Cents nach dem Gelde und Gewicht der Vereinigten Staaten:/; den Zoll auf Wallfischthran, welcher in Fässern oder Tonnen eingeführt wird, nicht höher als zu zwölf und ein halb Schillingen für hundert Pfund Hamburgisches Gewicht /:gleich achtzehn und dreiviertel Cents nach dem Gelde und Gewicht der Vereinigten Staaten:/ zu stellen.

Das Großherzogthum Mecklenburg-Schwerin erklärt sich ferner bereit, von den vorher erwähnten Gegenständen bei deren Transport auf der Berlin-Hamburger Eisenbahn keinen höhern Durchgangszoll zu erheben als zwei Schillinge für hundert Pfund Hamburgisches Gewicht /:gleich drei Cents nach dem Gelde und Gewichte der Vereinigten Staaten:/ und keinen Durchgangszoll auf die oben genannten Gegenstände zu legen, wenn sie über die Landeshäfen durchgeführt werden.

Es versteht sich jedoch, daß Nichts von dem hierin Gesagten hindern soll, eine die Controle-Kosten deckende Abgabe zu erheben, welche bei den zwei von dem Eingangszoll befreieten oder den frei transitirenden Gegenständen auf keinen Fall Einen Schilling für hundert Pfund Hamburgisches Gewicht /:gleich anderthalb Cents nach dem Gelde und Gewicht der Vereinigten Staaten:/ überschreiten soll.

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ART: 9.

The High Contracting Parties grant to Each other the liberty of having, Each in the ports of the other, Consuls, vice-consuls, commercial-agents, and vice-commercial-agents of their own appointment who shall enjoy the same privileges and powers as those of the most favoured nations; but if any of the said Consuls, shall carry on trade, they shall be subjected to the same laws and usages to which private individuals of their nation are subjected in the same place.

The Consuls, vice-consuls, commercial and vice-commercial-agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the masters and crews of the vessel belonging to the nation, whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the Captain should disturb the order or tranquillity of the country; or the said consuls, vice-consuls, commercial-agents or vice commercial-agents should require their assistance, to cause their decisions to be carried into effect or supported.

It is however understood, that this species of judgment or arbi-

ART: 9.

Die hohen contrahirenden Theile gestehen einander die Befugniß zu, jeder in den Häfen des andern selbst bestellte Consuln, Vice-Consuln, Handelsagenten und Vice-Handelsagenten zu unterhalten, welche die nemlichen Privilegien und Befugnisse, wie diejenigen der begünstigsten Nationen genießen sollen; wenn jedoch der eine oder der andere der genannten Consuln Handel treiben will, so sollen dieselben den nemlichen Gesetzen und Gebräuchen unterworfen sein, welchen Privatpersonen ihrer Nation in demselben Orte unterliegen.

Die Consuln, Vice-Consuln, Handels- und Vice-Handels Agenten sollen das Recht haben, als solche bei Streitigkeiten, welche zwischen den Capitains und Mannschaften der Schiffe der Nationen, deren Interessen sie wahrzunehmen beauftragt sind, entstehen mögen, als Richter und Schiedsmänner zu handeln, ohne Dazwischenkunft der Ortsbehörden, wenn nicht etwa das Benehmen der Mannschaften oder des Capitains die Ordnung oder die Ruhe des Landes stört, oder die besagten Consuln, Vice-Consuln, Handels-Agenten oder Vice-Handels-Agenten deren Beistand zu Vollziehung oder Aufrechthaltung ihrer Entscheidungen in Anspruch nehmen.

Es versteht sich jedoch, daß diese Art von Urtheil oder schieds-

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tration, shall not deprive the contending parties of the right they have to resort on their return, to the judicial authority of their own country.

The said Consuls, vice-consuls, commercial-agents and vice-commercial-agents are authorized to require the assistance of the local authorities for the search, arrest and emprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges and officers, and shall, in writing, demand said deserters, proving by the exhibition of the registers of the vessels, the musterrolls of the crews, or by any other official documents, that such individuals formed part of the crews, and on this claim being thus substantiated, the surrender shall not be refused.

Such deserters, when arrested, shall be placed at the disposal of the said Consuls, vice-consuls, commercial-agents or vice-commercial-agents and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be sent to the vessels to which they belong, or to others of the same country. But if not sent back within three months from the day of their arrest, they shall be

richterlicher Entscheidung die streitenden Theile nicht des ihnen zustehenden Rechts berauben soll, bei ihrer Zurückkunft an die richterliche Behörde ihres Landes sich zu wenden.

Die besagten Consuln, Vice-Consuln, Handels-Agenten oder Vice-Handels-Agenten sind befugt, den Beistand der Ortsbehörden zu Aufsuchung, Festnehmung und Gefangensetzung der Deserteurs von den Kriegs- und Handels-Schiffen ihres Landes in Anspruch zu nehmen. Zu diesem Behufe haben sie sich an die competenten Gerichte, Richter und Beamten zu wenden und die besagten Deserteurs schriftlich zu requiriren, indem sie durch Beibringung der Schiffsregister, der Musterrollen der Mannschaften oder anderer amtlichen Urkunden darthun, daß jene Individuen zu den Mannschaften gehörten und wenn diese Reclamation also begründet ist, so soll die Auslieferung nicht versagt werden.

Wenn dergleichen Deserteurs festgenommen sind, so sollen sie zur Verfügung der besagten Consuln, Vice-Consuln, Handels-Agenten oder Vice-Handels-Agenten gestellt werden und können sie auf Requisition und Kosten derer, welche sie reclamiren, in den öffentlichen Gefängnissen festgehalten werden. Wenn sie aber binnen drei Monaten vom Tage ihrer Festnehmung an nicht zurückgeschickt sind, so sollen sie in Frei-

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set at liberty and shall not be again arrested for the same cause. However if the deserter shall be found to have committed any crime or offence, his surrender may be delayed until the tribunal, before which his case shall be pending, shall have pronounced its sentence, and such sentence shall have been carried into effect.

ART: 10.

The subjects and citizens of the High Contracting Parties shall be permitted to sojourn and reside in all parts whatsoever of the said territories in order to attend to their affairs, and also to hire and occupy houses and warehouses for the purpose of their commerce, provided they submit to the laws, as well general as special, relative to the right of residing and trading.

Whilst they conform to the laws and regulations in force; they shall be at liberty to manage themselves their own business in all the territories subject to the jurisdiction of Each Party, as well in respect to the consignment and sale of their goods, by wholesale or retail, as with respect to the loading, unloading and sending off their ships, or to employ such agents and brokers as they may deem proper, they being, in all

heit gesetzt und wegen desselben Grundes nicht wieder verhaftet werden. Wenn jedoch befunden werden sollte, daß der Deserteur irgend ein Verbrechen oder Vergehen begangen hätte, so kann dessen Auslieferung ausgesetzt werden, bis das Gericht, vor welchem seine Sache anhängig ist, das Urtheil gesprochen haben und dieses Urtheil zur Vollstreckung gebracht sein wird.

ART: 10.

Den Unterthanen und Bürgern der hohen contrahirenden Theile soll erlaubt sein, in allen Theilen der besagten Gebiete sich aufzuhalten und zu wohnen, um ihren Geschäften nachzugehen und auch Häuser und Speicher behuf ihres Handels zu miethen und inne zu haben, vorausgesetzt, daß sie den allgemeinen und besondern Gesetzen in Betreff des Rechts zu wohnen und zu handeln, sich unterwerfen.

Solange sie den bestehenden Gesetzen und Verordnungen nachkommen, sollen sie die Freiheit haben, ihre Geschäfte in allen der Botmäßigkeit eines jeden Theils unterworfenen Gebieten, sowohl in Ansehung der Consignation und des Verkaufs ihrer Waaren en gros oder en detail, als hinsichtlich der Beladung, Ausladung und Absendung ihrer Schiffe selbst wahrzunehmen oder aber nach Belieben Agenten und Makler zu ge-

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these cases to be treated as the citizens or subjects of the country in which they reside, it being nevertheless understood, that they shall remain subject to the said laws and regulations also in respect to sales by wholesale or retail.

They shall have free access to the tribunals of justice in their litigious affairs on the same terms which are granted by the law and usage of country to native citizens or subjects, for which purpose they may employ in defence of their rights, such advocates, attornies and other agents as they may judge proper.

The citizens or subjects of Each Party shall have power to dispose of their personal property within the jurisdiction of the other, by sale, donation, testament or otherwise.

Their personal representatives being citizens or subjects of the other Contracting Party shall succeed to their said personal property, whether by testament or ab intestato. They may take possession thereof, either by themselves, or by others, acting for them, at their will, and dispose of the same, paying such duty only as the inhabitants of the country wherein the said personal prop-

brauchen, indem sie in allen diesen Fällen, wie die Bürger oder Unterthanen des Landes, in welchem sie wohnen, zu behandeln sein sollen, wobei es sich jedoch versteht, daß sie den besagten Gesetzen und Verordnungen auch in Ansehung von Verkäufen en gros oder en detail unterworfen bleiben sollen.

Sie sollen in ihren Proceßsachen freien Zutritt zu den Gerichten in gleichem Maaße, wie den eingebornen Bürgern oder Unterthanen nach den Gesetzen und Gebräuchen des Landes zustehet, haben und zu diesem Zwecke für die Vertheidigung ihrer Rechte Advocaten, Procuratoren und andere Agenten nach Gutbefinden gebrauchen dürfen.

Die Bürger oder Unterthanen jedes Landes sollen die Befugniß haben, über ihr persönliches Eigenthum innerhalb der Gerichtsbarkeit des Andern durch Verkauf, Schenkung, Testament oder sonst zu verfügen.

Wenn ihre Erben Bürger oder Unterthanen des andern contrahirenden Theils sind, so sollen diese in ihr Vermögen durch Testament oder ab intestato nachfolgen. Sie können davon selbst oder durch für sie handelnde Andere nach ihrem Willen Besitz nehmen und darüber verfügen, indem sie nur diejenige Abgift entrichten, welche die Einwohner des Landes, in welchem das besagte Vermögen

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erty is situated shall be subject to pay in like cases. In case of the absence of the personal representatives, the same care shall be taken of the said property as would be taken of a property of a native in like case, until the lawful owner may take measures for receiving it.

befindlich ist, ingleichen Fällen zu bezahlen verbunden sein werden. Im Fall der Abwesenheit der Erben soll für das besagte Vermögen bis dahin, daß der gesetzliche Eigenthümer Maaßregeln zu Empfangnahme desselben treffen kann, die nemliche Sorge getroffen werden, welche für das Vermögen eines Eingebornen in gleichem Falle getragen werden würde.

If any question should arise among several claimants to which of them the said property belongs, the same shall be finally decided, by the laws and judges of the Country, wherein it is situated.

Wenn zwischen verschiedenen Prätendenten Streit darüber entstehen sollte, wem von ihnen das besagte Vermögen gehöre, so soll selbiger nach den Gesetzen und durch die Richter des Landes, worin selbiger sich befindet, definitiv entschieden werden.

Where, on the decease of any person, holding real estate within the territories of one Party such real estate, would, by the laws of the land descend on a citizen or subject of the other were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all duties of detraction on the part of the Government of the respective States.

Wo bei dem Ableben eines innerhalb der Gebiete des einen Theils Grundeigenthum nach den Gesetzen des Landes auf einen Bürger oder Unterthan des andern Theils übergehen würde, wenn derselbe nicht als Fremder unfähig wäre, es zu besitzen, so soll einem solchen Bürger oder Unterthan eine angemessene Frist nachgelassen werden, um dasselbe zu verkaufen und den Erlös ohne Beschwerde und frei von allem Abzug von Seiten der Regierung der respectiven Staaten aus dem Lande zu ziehen.

The capitals and effects which the citizens or subjects of the respective Parties, in changing their residence shall be desirous

Die Capitalien und Fonds, welche die Bürger oder Unterthanen der respectiven Theile bei Veränderung ihres Aufenthalts

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of removing from the place of their domicil shall likewise be exempt from all duties of detraction or emigration on the part of their respective Governments.

ART: 11.

The present Treaty shall continue in force until the tenth of June One thousand eight hundred and fifty-eight, and further until the end of twelve months after the Government of Mecklenburg-Schwerin on the one part, or that of the United States on the other part, shall have given notice of its intention of terminating the same, but upon the condition hereby expressly stipulated and agreed, that, if the Grand-Duchy of Mecklenburg-Schwerin shall deem it expedient or find it cumpulsory during the said term, to levy a duty on paddy or rice in the husk, or augment the duties upon leaves, strips or stems of tobacco, on whale-oil and rice, mentioned in Article VIII. (eighth) of the present treaty the Government of Mecklenburg-Schwerin shall give notice of one year to the Government of the United States before proceeding to do so; and at the expiration of that year or any time subsequently the Government of the United States shall have full power and right to abrogate the present treaty by giving a previous notice of six months to the Government of

von ihrem Wohnorte fortzubringen wünschen, sollen ebenfalls von allen Abzugs- und Auswanderungsabgaben von Seiten ihrer respectiven Regierungen frei sein.

ART: 11.

Der gegenwärtige Vertrag soll bis zum zehnten Juni achtzehnhundert und sechs und funfzig in Kraft bleiben und ferner bis zum Ablauf von zwölf Monaten, nachdem die Mecklenburg-Schwerinsche Regierung einerseits, oder die Regierung der Vereinigten Staaten andererseits ihre Absicht zu erkennen gegeben hat, denselben zu Ende gehen zu lassen; jedoch mit der hiedurch ausdrücklich stipulirten Bedingung, daß, wenn das Großherzogthum Mecklenburg-Schwerin während des gedachten Zeitraums es seinem Interesse für angemessen erachten oder dazu veranlaßt sein sollte, einen Zoll auf Paddy /: ungeschälten Reis :/ zu legen oder die im Art. 8 des gegenwärtigen Vertrags gedachten Zölle auf Tabacksblätter, Stengel oder Streifen, auf Wallfischthran und Reis zu erhöhen, die Großherzoglich Mecklenburg-Schwerinsche Regierung Ein Jahr vor der Ausführung dieser Maaßregel der Regierung der Vereinigten Staaten Kenntniß davon geben und nach Ablauf dieses Jahrs oder zu jeder spätern Zeit die Regierung der Vereinigten Staaten volle Gewalt und

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Mecklenburg-Schwerin or to continue it (at its option) in full force until the operation thereof shall have been arrested in the manner first specified in the present Article.

Now therefore the Undersigned L. de Lützow, President of the privy Council and first Minister of His Royal Highness, on the part of Mecklenburg-Schwerin and A. Dudley Mann, special Agent on the part of the United States, invested with full powers to this effect, found in good and due form, have this day signed in triplicate, and have exchanged this declaration. The effect of this agreement is hereby declared to be to establish the aforesaid treaty[1] between the High Parties to this declaration, as fully and perfectly, to all intents and purposes, as if all the provisions therein contained, in the manner as they are above explicitly stated, had been agreed to in a seperate treaty, concluded and ratified between them in the ordinary form.

Befugniß haben soll, den gegenwärtigen Vertrag durch vorgängige sechsmonatliche Kündigung bei der Mecklenburg-Schwerinschen Regierung aufzuheben oder /:nach ihrer Wahl:/ ihn in voller Kraft fortbestehen zu lassen, bis die Wirksamkeit desselben in der im gegenwärtigen Artikel zuerst angegebenen Weise seine Endschaft erreicht hat;

so haben demnach die Unterzeichneten, L von Lützow, Geheime Raths-Präsident und Erster Minister Seiner Königlichen Hoheit, von Seiten Mecklenburg-Schwerin's, und A. Dudley Mann, SpecialAgent seitens der Vereinigten Staaten, versehen mit den hiezu erforderlichen Vollmachten, welche in guter und richtiger Form befunden sind, am heutigen Tage gegenwärtige Erklärung in dreifacher Ausfertigung unterzeichnet und ausgewechselt. Die Wirkung dieser Uebereinkunft wird hiemittelst dahin erklärt, daß der vorgedachte Vertrag[1] zwischen den hohen Parteien durch gegenwärtige Declaration festgestellt sein soll, in jeder Hinsicht und für alle Zwecke ebenso völlig und vollkommen, als wenn alle darin enthaltenen Bestimmungen, in der Weise, wie sie oben ausdrücklich festgestellt sind, in einem besonders zwischen ihnen in gewöhnlicher Form abgeschlossenen und ratificirten Vertrage vereinbart wären.

[1] Document 121.

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In witness whereof the above named plenipotentiaries have hereto affixed their names and seals.

Done at Schwerin, this 9th (ninth) day of December 1847.

Dessen zur Urkund haben die oben genannten Bevollmächtigten hierunter ihre Namen und Siegel gesetzt.

Gegeben zu Schwerin den 9n Tag des Monats December 1847.

A. Dudl[e]y Mann. [Seal]

[Seal] L of Lutzow.

NOTES

If one looks at substance and not at form, it is obvious that this agreement with the Grand Duchy of Mecklenburg-Schwerin was not, properly speaking, an accession to the treaty between the United States and Hanover of June 10, 1846 (Document 121); there is here an agreement between the United States and Mecklenburg-Schwerin perfectly independent and separate from that with Hanover; one need only contrast the terms of Articles 8 and 11 of the treaty with Hanover with the terms of Articles 8 and 11 of this declaration, to see that no "accession" in the technical sense was either contemplated or had; a treaty between the United States and Mecklenburg-Schwerin, with many provisions the same as those in the previous treaty between the United States and Hanover, was made; the new agreement, however, was not styled a treaty or convention, but a "declaration", although the expression, "The present Treaty", is used in Article 11.

By Article 12 of that treaty with Hanover several and separate (though similar) agreements with other German states were contemplated; such German states were to "accede" not to the treaty with Hanover, but to "the advantages and privileges contained in the stipulations" of that treaty, on the condition of conferring "similar favors upon the said United States to those conferred by the Kingdom of Hanover", etc.; there was no thought that any German state other than Hanover could or would be bound or be benefited by the covenants of or to Hanover, as such, but merely that there would be, *mutatis mutandis*, similar covenants.

The Source Text

It is stated in the declaration that it was executed in triplicate; there are two originals in the treaty file; each is written in parallel columns, English and German, with the English version at the left. The text here printed has been collated with that one of the two originals which is with the original proclamation (marked in pencil "Rec'd 18 Janʸ '48"); the other original (marked in ink "D.S Rec'd 19 Janʸ '48" and in pencil "Copy sent to Senate") omits a few commas which are here and differs in one or two other wholly trivial matters of punctuation; textually, no variances have been noticed except the insertion of a superfluous "the" (Article 1, final paragraph)

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in what may be called the other original; in that document there are also a few errors of spelling and similar slips, such as the omission of a final *s*.

THE PROCEDURE

When the treaty with Hanover of June 10, 1846 (Document 121), was signed, it was contemplated by the parties that similar agreements would be made between the United States and various German states other than Hanover, particularly the Grand Duchies of Oldenburg, Mecklenburg-Schwerin, and Mecklenburg-Strelitz; and provision to that end was made in Article 12 of that treaty. That expectation was realized as to the Grand Duchy of Oldenburg (Document 126); and the notes to Documents 121 and 126 include various references and quotations, not here repeated, which should be read in connection with this declaration.

A reading of the articles embodied in this declaration along with the articles of the treaty of 1846 with Hanover (e.g., Article 8) shows that the agreement of this declaration with Mecklenburg-Schwerin, while in many respects similar to the agreement with Hanover (see Articles 1–7 and 9–10), is a new and different agreement. As was pointed out in the notes to the declaration of accession of the Grand Duchy of Oldenburg (Document 126), accession to the treaty of 1846 with Hanover was, strictly and properly, not contemplated at all; what was contemplated by Article 12 of the treaty with Hanover was an agreement similar to, but several and distinct from, the treaty with Hanover, in the case of each other German state which might "accede". The form of a declaration of accession was used in the case of Oldenburg; the form of declaration was also used here; but as the stipulations of the parties are here embodied in the declaration *in extenso*, the use of the declaration form for the agreement in this case led to a result which differed, in respect of the procedure subsequent to the signing of the declaration, from that which would have followed from the use of the treaty form. That procedure will be explained in connection with references to the original documents in the treaty file.

The first of these is the declaration printed above; and concurrently with the signature of the declaration there was signed a protocol, an original of which, written in English, is in the file, reading as follows:

The treaty of commerce and navigation between the United States of America and the Kingdom of Hanover, concluded on the 10th day of June 1846. and since duly ratified by boths parties having been communicated to Baron of Lützow, Minister of foreign affaires of his Royal Highness the Grand-Duke of Mecklenburg-Schwerin to be laid before his Government, in order that it might avail itself of the 12th Article of said treaty by becoming a party to the same; and the Government of Mecklenburg-Schwerin desirous of strengthening the bonds of friendship and good understanding which so happily subsist between the two countries, and willing to use every means at its disposal to extend the commercial relations between Germany and the United States, His Royal Highness the Grand-Duke of Mecklenburg-Schwerin having conferred full powers to Baron of Lützow, Minister of foreign affairs and the President of the United States having furnished A. Dudley Mann with like full powers to exchange declarations: the aforesaid plenipotentaries met this day and made the exchange of this declaration, subject to the ratification of the President of the United States, which however

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must be effected and his acceptance of the accession officially made known to the Government of Mecklenburg-Schwerin within six months from this date, or otherwise this declaration shall be rendered null and void to all intents and purposes.

Done in duplicate at Schwerin the 9th (ninth) day of December 1847.

A. DUDLEY MANN.
L OF LUTZOW.

It is to be observed that the protocol of December 9, 1847, was before the Senate (Senate Confidential Document No. 5, 30th Congress, 1st session, Regular Confidential Documents, XXIII, 133–58); but it is not mentioned in the Senate resolution of advice and consent or in the United States instrument of ratification.

By the terms of that protocol the declaration did not go into force upon its signature and exchange; while not subject to the subsequent ratification of Mecklenburg-Schwerin (as it had received the prior approval of the "States" or representatives), it was subject to the ratification of the United States, to be communicated within a term of six months from its date. Thus there was obviously here a combination of procedure by declaration and procedure similar to that by treaty.

Accordingly and necessarily, the declaration was submitted to the Senate with the following presidential message of January 21, 1848 (Executive Journal, VII, 291):

I herewith communicate to the Senate, for its consideration, a declaration of the Government of the Grand Duchy of Mecklenburg-Schwerin, bearing date at the city of Schwerin, on the 9th December, 1847, acceding substantially to the stipulations of our treaty of commerce and navigation with Hanover of the 10th June, 1846.

Under the twelfth article of this treaty "the United States agree to extend all the advantages and privileges contained in the stipulations of the present treaty to one or more of the other states of the Germanic Confederation which may wish to accede to them, by means of an official exchange of declarations: *Provided*, That such state or states shall confer similar favors upon the said United States to those conferred by the Kingdom of Hanover, and observe and be subject to the same conditions, stipulations, and obligations."

This declaration of the Grand Duchy of Mecklenburg-Schwerin is submitted to the Senate, because in its 8th and 11th articles it is not the same in terms with the corresponding articles of our treaty with Hanover. The variations, however, are deemed unimportant, whilst the admission of our "paddy," or rice in the husk, into Mecklenburg-Schwerin free of import duty, is an important concession not contained in the Hanoverian treaty. Others might be mentioned which will appear upon inspection. Still, as the stipulations in the two articles just mentioned in the declaration are not the same as those contained in the corresponding articles of our treaty with Hanover, I deem it proper to submit this declaration to the Senate for their consideration before issuing a proclamation to give it effect.

I also communicate a dispatch from the special agent on the part of the United States, which accompanied the declaration.

The Senate resolution of advice and consent of May 18, 1848, was somewhat adapted to conform to the circumstances of the case (*ibid.*, 414, 415–16); the text here printed is from the attested resolution in the file, which has a pencil note at the foot, "extend the time for two months from date":

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Resolved, (two-thirds of the Senators present concurring) That the Senate have considered the Declaration of the Government of the Grand Ducky of Mecklenburg Schwerin, done at Schwerin the 9th day of December, 1847, by L. de Lutzow, president of the privy council and first minister of His Royal Highness on the part of Mecklenburg Schwerin, and A. Dudley Mann, Special Agent on the part of the United States, and transmitted in the message of the President of the 21st of January, 1847 [1848], and do advise and consent to its ratification.

There followed the ratification on the part of the United States, of May 20, 1848, which is in this somewhat special form (duplicate original in the treaty file):

James K. Polk, President of the United States of America.

To all and singular who shall see these presents, Greeting:

Whereas, a Treaty of Commerce and Navigation between the United States of America, and His Majesty the King of Hanover, was concluded at Hanover on the tenth day of June, one thousand eight hundred and forty-six, by the Plenipotentiaries of the contracting parties, and was subsequently duly ratified on the part of both Governments:

And whereas, by the terms of the twelfth article of the same, the United States agree to extend all the advantages and privileges contained in the stipulations of the said Treaty to one or more of the other States of the German Confederation which may wish to accede to them, by means of an official exchange of declarations, provided that such State or States shall confer similar favors upon the United States to those conferred by the Kingdom of Hanover, and observe and be subject to the same conditions, stipulations, and obligations:

And whereas,—the Government of the Grand Dutchy of Mecklenberg Schwerin having signified its desire to accede to the said Treaty and to all the stipulations and provisions therein contained, as far as the same are or may be applicable to the two countries, and to become a party thereto, and having expressed its readiness to confer similar favors upon the United States, as an equivalent in all respects to those conferred by the Kingdom of Hanover,—A. Dudley Mann, Special Agent on the part of the United States, and L. de Lutzow, President of the Privy Council and First Minister of His Royal Highness the Grand Duke, on the part of Mecklenberg Schwerin, invested with full powers to this effect, did, on the ninth day of December, A.D., 1847, sign and exchange a Declaration (subject to the ratification of the President of the United States) establishing the aforesaid Treaty between the high parties, with certain modifications of the same, all which plainly appears from the said Declaration, which is considered to be as valid and binding upon the parties, to all intents and purposes, as if all the provisions therein contained and explicitly stated had been agreed to in a separate Treaty, concluded and ratified between them in the ordinary form:

And whereas, the Senate of the United States, by their resolution of the 18th day of May, instant, (two-thirds of the Senators present concurring,) did advise and consent to its ratification:

Now, therefore, be it known, that I, James K. Polk, President of the United States of America, having seen and considered the said Declaration, do, in pursuance of the aforesaid advice and consent of the Senate of the United States, by these presents, accept, ratify, and confirm the same, and every clause and article thereof.

In testimony whereof, I have caused the Seal of the United States to be hereunto affixed. Given under my hand, at the City of Washington, this twentieth day of May, in the year of Our Lord one thousand eight hundred and forty-eight; and of the Independence of the United States of America, the seventy-second.

[Seal]

JAMES K. POLK

By the President:
JAMES BUCHANAN
Secretary of State.

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The date of action by the Senate made it impracticable for the ratification of the United States to be delivered to the Government of Mecklenburg-Schwerin within six months from the date of signature of the declaration, or by June 9, 1848; such delivery did not take place until June 27; and an instrument of acknowledgment of the receipt thereof, at the same time waiving any question of delay, was signed and sealed on June 29. The original of that instrument, in German, with the following translation thereof, is in the treaty file:

We, Frederick Francis, by the Grace of God Grand Duke of Mecklenburg, Prince of Wenden, Schwerin, and Ratzeburg, also Count of Schwerin, Lord of the Territories of Rostock and Stargard, etc., etc.

Do hereby make known that, whereas the accession of Our Grand Duchy to the Treaty of Commerce and Navigation concluded at Hanover on the 10th of June, 1847 [1846], between His Majesty the King of Hanover and the United States of North America, was agreed on between Dudley Mann, Esq., the Plenipotentiary of the United States of North America, and Our Plenipotentiary, Privy Councilor, President von Lützow, and on the 9th of December of the past year the declarations thereupon were exchanged, with the provision that the ratification of the President of the United States should be produced within six months thereafter; and

Whereas the document containing this ratification was delivered by Dudley Mann, Esq., to Our Privy Councilor, President von Lützow, on the 27th of June of this present year, the said agreement shall now go into effect, according to its whole tenor and in all its parts; and although the document of ratification is delivered after the expiration of the term of six months, it shall nevertheless be carried into execution and observed in the same manner as if the ratification had been brought to our knowledge within the right time, before the 9th of June of this present year.

In testimony whereof we have signed these presents with our own hand and have caused our grand-ducal seal to be affixed thereto.

Done at Schwerin on the 29th day of June, 1848.

[Seal] FRIEDRICH FRANZ

LUTZOW

Declaration.

The original proclamation of August 2, 1848, is in the treaty file; it recites ratification "on both parts" but omits mention of the essential fact of the delivery and acceptance of the United States instrument of ratification:

By the President of the United States of America.

A PROCLAMATION.

Whereas, the Grand Duke of Mecklenburg-Schwerin, under the authority of the Twelfth Article of the Treaty of Commerce and Navigation between the United States of America and the King of Hanover, bearing date the 10th day of June, one thousand eight hundred and forty-six, has become a party to the said Treaty, with certain modifications, by virtue of a Declaration of Accession to the same, which was signed and duly exchanged at Schwerin, on the 9th day of December, one thousand eight hundred and forty-seven, between A. Dudley Mann, Special Agent of the United States, and L. de Lutzow, President of the Privy Council and First Minister of His Royal Highness the Grand Duke of Mecklenburg-Schwerin, on the part of their respective Governments—which Declaration is word for word as follows:

[Here follows the original declaration in English and German]

And whereas the said Declaration of Accession has been duly ratified on both parts:

Now, therefore, be it known, that I, James K. Polk, President of the United States of America, have caused the said Declaration to be made public, to the

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end that the same, and every clause and article thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand, and caused the Seal of the United States to be affixed.

Done at the City of Washington, this second day of August, in the [Seal] year of Our Lord one thousand eight hundred and forty-eight; and of the Independence of the United States of America, the seventy-third.

JAMES K. POLK

By the President:
JAMES BUCHANAN
Secretary of State.

Mention of the declaration as one of seven treaties of commerce of "the last four years" was made in the lengthy annual message to Congress of December 5, 1848 (Richardson, IV, 629–70, at p. 629).

THE NEGOTIATIONS

Only such points as are not treated in the notes to Documents 121 and 126 are covered here.

In his despatch from London of June 17, 1846, written a week after the signature of the treaty with Hanover, is this comment of Ambrose Dudley Mann, Special Agent of the United States (D.S., 14 Special Agents, German States, No. 4):

It was not advisable with such information as was furnished me, and with my own knowledge upon the subject, to present my credentials at either of the Mecklenberg's. They are each on terms, particularly Strelitz, of the most friendly and indeed intimate character with Prussia, and doubtless would at once have disclosed the object of my mission, to the court at Berlin. I can now approach them, however, or as soon as the Treaty comes back ratified, with some degree of certainty of success. They have as you know, at least Schwerin, the *indirect* carrying under the proclamation of the President; but as this is liable to be revoked, I am disposed to believe that, when it is seen how much Hanover and Oldenburg have conceded in order to place their navigation with the United States on a *permanent* basis, they will accede to similar conditions and consequently exchange declarations.

Two despatches of Mann report the negotiations at Schwerin; from the first, of October 28, 1847, the following is excerpted (*ibid.*, No. 6):

In my first interview with the Minister of Foreign Affairs of the Grand Duchy of Mecklenburg-Schwerin, during my present visit, he manifested a decided disinclination to make his government a party to the Hanover Treaty, alleging as a reason that more advantages were enjoyed under the Proclamation of the President [of April 28, 1835; 4 Statutes at Large, 818], in navigation, than it would be entitled to by the stipulations of the Treaty. This fact, I admitted, was indisputable, inasmuch as all vessels owned by Mecklenburg subjects, and sailing under the Mecklenburg flag, wherever built, were permitted to engage in the indirect carrying to the United States, while the provisions of the Treaty would confine this navigation intercourse exclusively to vessels the build of Mecklenburg, or such as should be purchased from the United States: But while making such admission I would with all sincerity state, not more on my own opinion than upon the opinions of others much better informed upon the subject than myself, that there was a considerable degree of certainty that the Act of Congress [of May 24, 1828; *ibid.*, 308–9], authorizing the President's Proclamation, by which the Grand Duchy of Mecklenburg-Schwerin was entitled to the privileges of the indirect

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carrying, would be repealed at an early day, and that, consequently, the advantages in commerce and navigation, which it bestowed upon her flag, would be lost.

The Minister of Foreign Affairs appeared to attach no great importance to the triangular carrying to the United States, but considered the direct trade to, and the indirect from, vastly more valuable to his country,—a trade which under our navigation system it could not be deprived of. I replied that circumstances might arise to render a change of this system, even, indispensable: That we might be forced in justice to ourselves to repeal the law of [January 7] 1824 [*ibid.*, 2-3], and act in a spirit of retaliation—as we had done successfully against Great-Britain at an early period of our history—by levying tonnage duties upon the vessels of every state that collected transit duties on our staple products, in their movements to a third state, to double or thricefold the amount at present exacted: And, that while we entertained a disposition to extend the utmost liberality, without discrimination, to small states, it was a primary object of our government, in order to extend the consumption of our rapidly augmenting agricultural and other products, to require in return a similar liberality.

The view of the subject, thus presented to the consideration of the Minister of Foreign Affairs, caused the Executive council to meet on the 25th for the purpose of deliberating upon the expediency of acceding to the Treaty. While this body was in session, a gentleman, having charge to some degree of the public finances, waited upon me to state, and explain by facts and figures, that it was wholly impossible at present for the government to reduce the transit duty on the line of rail-road, in the territory of Mecklenburg-Schwerin, between Hamburg and Berlin, on the articles of cotton, tobacco, rice, and whale oil, below three cents on the 100 lbs.; but that if I would designate what would be required as "similar favors", (the expression in the 12th Art. of the Treaty) for the three cents reserved to be collected, instead of two, as in Hanover and Oldenburg, the government would determine whether it could be granted.

When it is considered that the transit duties in the Kingdom of Hanover, prior to the Treaty, were twelve cents per 100lbs, and that on one, and that the most important, route in the Zollverein they are at present thirty-six cents per. 100lbs., and on another, less travelled, twenty-four, it would seem that the trifling difference between the amount levied in Hanover and that levied in Mecklenburg, upon a solitary route, ought to create no difficulties to accession, even if Mecklenburg was unable to give a sufficient consideration for its retention:—I am the more inclined to this belief, on account of the rival which has been created to the line mentioned, by the rail-road from Bremen to the city of Hanover, opening a communication with Berlin. The Mecklenburg duties, if they are found to be burdensome, will in self-defence, have to be abolished or modified, trifling in reality as they are. Indeed, it is beginning to be generally acknowledged that the Treaty stipulations of Hanover with the United States, must hasten the abrogation of the transit duty system throughout Germany.

Viewing the question in this light, and having an eye to ulterior objects calculated to benefit the leading interests of our country, I should have but badly discharged my duties if I had rejected an application from Mecklenburg to become a party to the Treaty, because of the trifling obstacle which apparently interposed. But the Minister of Foreign Affairs was not in a condition to make a definitive proposition for accession. I submitted to him the terms which I should require as an equivalent for the difference in transit duties, or as "similar favors" to those we had secured from Hanover and Oldenburg. Last evening he sent me a Note, in which he stated, "I have no hesitation in saying that the following duties "have been proposed by government to the States, viz:

"1. Raw Cotton to enter duty free.

"2. Tobacco in leaves and stems 1* thaler 2 shillings per 100lbs. (the same duty as is levied in Hanover & Oldenburg.)

"3. Train Oil 12½ shillings per 100lbs.—(one fourth less than the Hanover duty, and one half less than the Zollverein duty.)

"4. Rice 25 shillings per 100lbs.—(one fourth less than the Hanover duty, and one half less than the Zollverein duty.)

* A Thaler is about 68 cents.—and 60 shillings equal to 100 cents.

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"It is the intention of the government of Mecklenburg to grant an entire free "transit to the above mentioned four articles, in so far as they pass through the "Mecklenburg sea-port towns, Rostock and Wismar."

"I further beg to mention that the Mecklenburg government would be well "inclined to propose to the States a mere nominal duty on Paddy—no more than "to cover the expense of control."

This proposition contains precisely the terms that I proposed; and I need not enlarge on the benefits that will be secured to the New-England fisherman, and to the rice and tobacco grower, if the "States" will give their assent to the measure. It may not be amiss for me to remark, however, that the population of 650,000 inhabitants of the two Mecklenburgs, consume as large a quantity of these three articles, as is consumed by double the number in other German sovereinties.

The representatives, or "States", are to assemble on the 16th of November, but I can give you no assurance that they will decide favorably, upon the measure to be proposed by the government. Their number amounts to about 600, but more than one half of them are seldom present. They have as a body great independence of character, and entertain an exceeding aversion to encroach upon old established customs. Their system of raising revenue, the most imperfect one assuredly that ever existed in a civilized country, has not been changed since 1738; and if we succeed in making an innovation upon it, I shall regard the occurrence as one of the great civic achievements of the age. I should despair in the outset if it were not for the universal desire manifested by the Mecklenburgers to foster their shipping. The session is usually of about one months duration, and I design attending it, or until the question is disposed of finally.

Nothing appears of record regarding the full power of the Plenipotentiary of Mecklenburg-Schwerin, beyond the statement of authorization in the final clause of the declaration and in the protocol of the same date, above quoted.

The despatch transmitting the declaration of December 9, 1847, is dated December 7; a copy of that despatch was transmitted to the Senate with the presidential message of January 21, 1848, and was printed (Executive Journal, VII, 291; Senate Confidential Document No. 5, 30th Congress, 1st session, Regular Confidential Documents, XXIII, 133–58); its text follows (D.S., 14 Special Agents, German States, No. 7; the double underscoring in the original is here indicated by small capitals):

I have the honor to transmit herewith the Declaration of Accession of the Grand-Duchy of Mecklenburg-Schwerin to the existing Treaty between the United States and Hanover. The form, as you will perceive, adopted for this purpose is entirely different from that employed in the case of Oldenburg; yet as no feature has been introduced at variance with the original Treaty, it seems to me that no objections can be urged against it. However determining never to even slightly disobey my instructions, I signed it under a protocol, that it was optionary with the President to ratify or not. This I should have done under a simple declaration of the Government of Mecklenburg-Schwerin, inasmuch as it is a delicate point to decide what are "similar favors". I am clearly of opinion that Mecklenburg-Schwerin has given more than an equivalent for the concessions granted by Hanover, all things taken into consideration, and I quite confidently believe that in this I shall have the full concurrence of the President and yourself. Should my expectations be realized, as you will observe in the protocol—which accompanies this—the accession may be at once proclaimed. The "similar favors" are expressed in article 8: the reservations respecting them in article 11. Not a word is changed elsewhere.

I may mention with respect to the transit duty of one cent on the 100lbs. weight of our staples exacted in Mecklenburg-Schwerin, on the Hamburg and Berlin

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rail-road, more than is exacted in Hanover, that a Convention exists between the states through which the line passes upon the subject of transit charges upon it, and that it is in contemplation as I have been informed, to reduce the duties at an early day as a matter of interest. This measure is indispensable, because, without its adoption, the carrying will be done almost exclusively from Bremen, through Hanover, to Saxony, Prussia, Bavaria &c. upon the rail-road which has just been opened. The same influences will operate to occasion a reduction of the upper Elbe tolls,—on heavy articles lower,—on light ones higher,—than the transit duties on the route mentioned. In fact I regard it as certain, from numerous indications, that the land transit and river toll systems of Germany, under the wound which they received through the Hanover Treaty, and the fresh stab inflicted by Mecklenburg-Schwerin, will speedily cease to exist.

That part of the Hamburgh and Berlin railway line which is in the territory of Mecklenburg Schwerin, runs parallel with and is adjacent to the Elbe, near the Hanover border. The proceeds upon it accruing from transits—as well as the tolls from the river—appertain to the crown, and on this account there was an indisposition on the part of the cabinet to intermeddle upon the subject. Viewing the transit and toll charges as of but little importance, and having satisfied myself that it was impossible to obtain the trifling reduction by which they would conform to the Hanover scale, I availed myself of the circumstance to insist upon concessions in Customs and you have before you the result of my success. Although the rail-road and the river referred to are the great thoroughfares from Hamburg to the interior of Germany, I nevertheless consider that the abolition of the transit duty upon our staples, in their movement through Mecklenburg ports, is a *quid pro quo* for the duty retained thereon above the uniform one in Hanover, even if it were to be continued.

It is scarcely necessary for me to detail the nature of the obstacles which I had to combat with during the pendency of the negotiations. It may be proper, however, for me to observe that we had nothing whatever to give to Mecklenburg-Schwerin. In the accession we have imposed restrictions upon the privileges which she has enjoyed for the last twelve years. In her intercourse with us hereafter she will be confined to the vessels of her build and to those of the build of the United States. At present she may purchase where she pleases, if I am not mistaken in the provisions of the law upon which the Proclamation was issued. In my opinion it is imperative upon Congress to repeal the Act of 1828, if not that also, of 1824 [both cited above]. By such a procedure Hanover, Oldenburg, and Mecklenburg would be furnished with an ample justification, for the spirit of liberality which they have displayed, to the other German states.

But then there is the Treaty with Belgium [of November 10, 1845; Document 116] that the Zollverein can point to, and exultingly upbraid the coast states for a want of tact in diplomacy, or a want of knowledge of their interests. By Article XII of that Treaty, "The high contracting parties agree to consider and treat "as Belgian vessels and as vessels of the United States *all those which, being* "*provided by the competent authority with a passport, sea letter, or* ANY OTHER "*sufficient document shall be recognized, conformably with existing laws, as national* "*vessels* in the country to which they respectively belong." The stipulation in the Hanover Treaty [of June 10, 1846; Document 121] upon the same subject, as contained in article V, provides that, "The *privileges secured* by the present "Treaty to the respective vessels of the high contracting parties, *shall only extend* "*to such as are built within their respective territories*, or lawfully condemned as "prizes of war, or adjudged to be forfeited for a breach of the municipal laws of "either of the high contracting parties, *and belonging wholly to their citizens or* "*subjects.*"

It is unnecessary, by way of explanation, to offer a single remark relative to the advantages enjoyed by Belgium over Hanover, under the articles above quoted, in their navigation relations with us. But Belgium has another and a still more important advantage over Hanover, in the terms of her Treaty. Article VIII stipulates that "Articles of every description imported into the United States "from other countries than Belgium, under the Belgian flag, shall pay no other "or higher duties whatever, than if they had been imported under the flag of the "*most favored* FOREIGN NATION, *other than the flag of the country from which the*

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"*importation is made.* And, reciprocally, articles of every description imported "under the flag of the United States into Belgium from other countries than the "United States, shall pay no other or higher duties whatsoever, than if they had "been imported under the *flag of the* FOREIGN NATION *most favored, other than that "of the* country from which the importation is made." "The stipulation in the Hanover Treaty, relating to indirect importations, is contained in the first article and expressed in the following words:—"The high contracting parties agree that "whatever kind of produce, manufacture, or merchandise of any foreign country "can be, from time to time, lawfully imported into the United States in their own "vessels, may also be imported in vessels of the kingdom of Hanover; and no "higher or other duties upon the tonnage or cargo of the vessel shall be levied or "collected, *whether the importation be made in a vessel of the United States or in a "Hanoverian vessel.* And in like manner, whatever kind of produce, manufacture, "or merchandise of any foreign country can be, from time to time, lawfully im-"ported into the kingdom of Hanover in its own vessels, may also be imported in "vessels of the United States; *and no higher or other duties upon the tonnage or cargo "of the vessel shall be levied or collected,* WHETHER THE IMPORTATION BE MADE IN "THE VESSELS OF THE ONE PARTY OR THE OTHER."

At first sight I was struck with the singular phraseology of the 8th article of the Belgian Treaty. It seemed to me to mean more than it expressed or rather to express more than it meant. I now learn, from an authentic source, that Belgium favors the cargoes which arrive under her flag, in conformity with an old law, by a discrimination of ten per cent against those which arrive under the flag of any foreign country except that from which the importation is made; and consequently the "*reciprocity*", in the indirect carrying between that kingdom and the United States, is "*exclusively on one side*". She may carry from *all the world* to us, because we permit, by Treaty stipulations, most other foreign nations to do so—and her flag is placed upon the most favorable footing—while we cannot carry from *any part of the world* to her, except from our ports, without paying ten per cent. more than if the cargoes were conveyed in her bottoms. Hanover, Oldenburg, and Mecklenburg possess no such advantages, for they are obligated to lay no higher duties, "whether the (indirect) importation be made in the vessels of the one party or the other."

In conceding to us so much as she has done, it was very natural that Mecklenburg-Schwerin should strenuously insist upon all the privileges of navigation obtained by Belgium; and you may readily conjecture the magnitude of the difficulties to be overcome, before I could succeed in bringing her to terms, without granting them. But there were other counteracting influences, to contend with, of a formidable character, resulting from the near relationship of the Grand Duke to the King of Prussia. When Europe was parcelled out at Vienna by Metternich and Castlereagh, it was agreed that this Grand Duchy, in the event of the male line becoming extinct of the reigning sovereign, should be incorporated with Prussia; and although it is not likely that this will occur, yet the possibility of it makes the "*government*" cautious not to give any cause of offence to their neighbor. The "*states*" however are more independent, and were willing to be committed to low duties. Thus the voice of the people in this China of Germany, as it is sometimes reproachingly termed by the impracticables of Berlin, is seen in the accession. That the Prussian cabinet will raise a terrific out-cry against Mecklenburg-Schwerin cannot be doubted; but despite its machinations the deed is done, and its clamor and wailings will be of no avail.

As soon as the Declaration is proclaimed, it is desirable that I should be made acquainted with the fact, in order that I may make an "official" communication of it to the Minister of Foreign Affairs, as agreed upon.

Nothing has been observed in the instructions or despatches regarding a communication to the Government of Mecklenburg-Schwerin of the proclamation of this declaration; it seems that Mann expected ratification by the President (without submission to the Senate), followed at once by proclamation; but the condition of the protocol of December 9, 1847, was duly fulfilled, as has been seen.

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The Grand Duchy of Mecklenburg-Schwerin

The Grand Duchy of Mecklenburg-Schwerin was a member of the Germanic Confederation (1815–66) but not at the time of this agreement of the Zollverein or Customs Union (see the notes to Document 59). Mecklenburg-Schwerin joined the North German Confederation in 1866 and became a State of the German Empire in 1871.

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Treaty Series No. 207
9 Statutes at Large, 922–43
18 *ibid.*, pt. 2, Public Treaties, 492–503

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MEXICO : FEBRUARY 2, 1848

Treaty of Guadalupe Hidalgo. Treaty of Peace, Friendship, Limits, and Settlement (with additional and secret article which was not ratified), with Map of the United Mexican States[1] *and with Plan of the Port of San Diego, signed at Guadalupe Hidalgo February 2, 1848. Originals of the treaty and additional and secret article in English and Spanish.*

Treaty and additional and secret article submitted to the Senate February 23, 1848. (Message of February 22, 1848.) Map of the United Mexican States and Plan of the Port of San Diego submitted to the Senate March 7, 1848. Resolution of advice and consent, with amendments (including the striking out of the additional and secret article), March 10, 1848. Ratified by the United States March 16, 1848. Ratified by Mexico May 30, 1848. Ratifications exchanged at Querétaro May 30, 1848. Proclaimed July 4, 1848.

The editorial notes contain a statement and explanation of the Senate amendments and of the differences between the text of the treaty as signed and as it went into force.

Following the treaty text is a reproduction of the Plan of the Port of San Diego, and in a pocket inside the back cover of this volume is a reproduction of the Disturnell Map, authenticated copies whereof were, as stated in Article 5, added to the treaty.

In the name of Almighty God:

The United States of America, and the United Mexican States, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two Republics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal bene-

En el nombre de Dios Todo-Poderoso.

Los Estados-Unidos mexicanos y los Estados-Unidos de América, animados de un sincero deseo de poner término á las calamidades de la guerra que desgraciadamente existé entre ambas Repúblicas, y de establecer sobre báses sólidas relaciones de paz y buena amistad, que procuren recíprocas ventajas

[1] These six words are from the title ascribed to the map in the English version of the treaty, Article 5; the title of the map is "Mapa de los Estados Unidos de Méjico".

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fits upon the citizens of both, and assure the concord, harmony and mutual confidence, wherein the two peoples should live, as good neighbours, have for that purpose appointed their respective Plenipotentiaries: that is to say, the President of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the President of the Mexican Republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto, and Don Miguel Atristain, citizens of the said Republic; who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of Peace, arranged, agreed upon, and signed the following

Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic.

ARTICLE I.

There shall be firm and universal peace between the United States of America and the Mexican Republic, and between their respective countries, territories, cities, towns and people, without exception of places or persons.

ARTICLE II.

Immediately upon the signature of this Treaty, a convention shall be entered into between a Commissioner or Commissioners appointed by the General in Chief

á los Ciudadanos de uno y otro pays, y afianzen la concordia, armonia y mútua seguridad en que deben vivir, como buenos vecinos, los dos pueblos; han nombrado á este efecto sus respectivos Plenipotenciarios; á saber, el Presidente de la República mexicana á Don Bernardo Couto, Don Miguel Atristain y Don Luis Gonzaga Cuevas, ciudadanos de la misma República; y el Presidente de los Estados-Unidos de América á Don Nicolas P. Trist, ciudadano de dichos Estados; quienes despues de haberse comunicado sus plenos poderes, bajo la proteccion del Señor Dios Todo-poderoso, autor de la paz, han ajustado, convenido y firmado el siguiente

Tratado de Paz, Amistad, Límites y Arreglo definitivo entre la República mexicana y los Estados-Unidos de América.

ARTÍCULO I.

Habrá paz firme y universal entre la República mexicana y los Estados-Unidos de América y entre sus respectivos paises, territorios, ciudades, villas y pueblos, sin escepcion de lugares ó personas.

ARTÍCULO II.

Luego que se firme el presente Tratado habrá un convenio entre el comisionado ú comisionados del Gobierno mexicano, y el ó los que nombre el General en Gefe de

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of the forces of the United States, and such as may be appointed by the Mexican Government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be reestablised, as regards the political, administrative, and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

ARTICLE III.

Immediately upon the ratification of the present treaty by the Government of the United States, orders shall be transmitted to the Commanders of their land and naval forces, requiring the latter, (provided this treaty shall then have been ratified by the Government of the Mexican Republic and the ratifications exchanged) immediately to desist from blockading any Mexican ports; and requiring the former (under the same condition) to commence, at the earliest moment practicable, withdrawing all troops of the United States then in the interior of the Mexican Republic, to points, that shall be selected by common agreement, at a distance from the sea-ports, not exceeding thirty leagues; and such evacuation of the interior of the Republic shall be completed with the least possible delay; the Mexican Government hereby binding itself to afford every facility in it's power for

las fuerzas de los Estados-Unidos, para que cesen provisionalmente las hostilidades, y se restablezca en los lugares ocupados por las mismas fuerzas el órden constitucional en lo político, administrativo y judicial, en cuanto lo permitan las circunstancias de ocupacion militar.

ARTÍCULO III.

Luego que este Tratado sea ratificado por el Gobierno de los Estados-Unidos, se expedirán órdenes á sus comandantes de tierra y mar previniendo á estos segundos (siempre que el Tratado haya sido ya ratificado por el Gobierno de la República mexicana y cangeadas las ratificaciones) que inmediatamente alcen el bloqueo de todos los puertos mexicanos, y mandando á los primeros (bajo la misma condicion) que á la mayor posible brevedad comiencen á retirar todas las tropas de los Estados-Unidos que se halláren entonces en el interior de la República mexicana, á puntos que se elegirán de comun acuerdo, y que no distarán de los puertos mas de treinta leguas: esta evacuacion del interior de la República se consumará con la menor dilacion posible, comprometiéndose á la vez el Gobierno mexicano á facilitar, cuanto quepa en su arbitrio, la evacuacion de las tropas ameri-

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rendering the same convenient to the troops, on their march and in their new positions, and for promoting a good understanding between them and the inhabitants. In like manner, orders shall be despatched to the persons in charge of the Custom Houses at all ports occupied by the forces of the United States, requiring them (under the same condition) immediately to deliver possession of the same to the persons authorized by the Mexican Government to receive it, together with all bonds and evidences of debt for duties on importations and on exportations, not yet fallen due. Moreover, a faithful and exact account shall be made out, showing the entire amount of all duties on imports and on exports, collected at such Custom Houses, or elsewhere in Mexico, by authority of the United States, from and after the day of ratification of this treaty by the Government of the Mexican Republic; and also an account of the cost of collection; and such entire amount, deducting only the cost of collection, shall be delivered to the Mexican Government, at the City of Mexico, within three months after the exchange of ratifications.

The evacuation of the Capital of the Mexican Republic by the troops of the United States, in virtue of the above stipulation, shall be completed in one month

canas; á hacer cómodas su marcha y su permanencia en los nuevos puntos que se elijan; y á promover una buena inteligencia entre ellas y los habitantes. Igualmente se librarán órdenes á las personas encargadas de las Aduanas marítimas en todos los puertos ocupados por las fuerzas de los Estados-Unidos, previniéndoles (bajo la misma condicion) que pongan inmediatamente en posesion de dichas Aduanas á las personas autorizadas por el Gobierno mexicano para recibirlas, entregándoles al mismo tiempo todas las obligaciones y constancias de deudas pendientes por derechos de importacion y exportacion, cuyos plazos no estén vencidos. Ademas se formará una cuenta fiel y exacta que manifieste el total monto de los derechos de importacion y exportacion recaudados en las mismas Aduanas marítimas ó en cualquiera otro lugar de México por autoridad de los Estados-Unidos desde el dia de la ratificacion de este Tratado por el Gobierno de la República mexicana; y tambien una cuenta de los gastos de recaudacion: y la total suma de los derechos cobrados, deducidos solamente los gastos de recaudacion, se entregará al Gobierno mexicano en la ciudad de México á los tres meses del cange de las ratificaciones.

La evacuacion de la capital de la República mexicana por las tropas de los Estados-Unidos, en consequencia de lo que queda estipulado, se completará al mes de

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after the orders there stipulated for shall have been received by the commander of said troops, or sooner if possible.

ARTICLE IV.

Immediately after the exchange of ratifications of the present treaty, all castles, forts, territories, places and possessions, which have been taken or occupied by the forces of the United States during the present war, within the limits of the Mexican Republic, as about to be established by the following Article, shall be definitively restored to the said Republic, together with all the artillery, arms, apparatus of war, munitions and other public property, which were in the said castles and forts when captured, and which shall remain there at the time when this treaty shall be duly ratified by the Government of the Mexican Republic. To this end, immediately upon the signature of this treaty, orders shall be despatched to the American officers commanding such castles and forts, securing against the removal or destruction of any such artillery, arms, apparatus of war, munitions or other public property. The City of Mexico, within the inner line of intrenchments surrounding the said City, is comprehended in the above stipulations, as regards the restoration of artillery, apparatus of war, &c.

recibirse por el comandante de dichas tropas las órdenes convenidas en el presente artículo, ó antes si fuere posible.

ARTÍCULO IV.

Luego que se verifique el cange de las ratificaciones del presente Tratado, todos los castillos, fortalezas, territorios, lugares y posesiones que hayan tomado ú ocupado las fuerzas de los Estados-Unidos, en la presente guerra, dentro de los límites que por el siguiente artículo van á fijarse á la República mexicana, se devolverán definitivamente á la misma República, con toda la artilleria, armas, aparejos de guerra, municiones, y cualquiera otra propiedad pública existente en dichos castillos y fortalezas cuando fueron tomados, y que se conserve en ellos al tiempo de ratificarse por el Gobierno de la República mexicana el presente Tratado. A este efecto inmediatamente despues que se firme, se expedirán órdenes á los oficiales americanos que mandan dichos castillos y fortalezas para asegurar toda la artilleria, armas, aparejos de guerra, municiones, y cualquiera otra propiedad pública, la cual no podrá en adelante removerse de donde se halla, ni destruirse. La ciudad de Mexico dentro de la linea interior de atrincheramientos que la circundan queda comprendida en la precedente estipulacion en lo que toca á la devolucion de artilleria, aparejos de guerra ect^{a}

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The final evacuation of the territory of the Mexican Republic, by the forces of the United States, shall be completed in three months from the said exchange of ratifications, or sooner, if possible: the Mexican Government hereby engaging, as in the foregoing Article, to use all means in it's power for facilitating such evacuation, and rendering it convenient to the troops, and for promoting a good understanding between them and the inhabitants.

If, however, the ratification of this treaty by both parties should not take place in time to allow the embarcation of the troops of the United States to be completed before the commencement of the sickly season, at the Mexican Ports on the Gulf of Mexico; in such case a friendly arrangement shall be entered into between the General in Chief of the said troops and the Mexican Government, whereby healthy and otherwise suitable places at a distance from the ports not exceeding thirty leagues shall be designated for the residence of such troops as may not yet have embarked, until the return of the healthy season. And the space of time here referred to, as comprehending the sickly season, shall be understood to extend from the first day of May to the first day of November.

La final evacuacion del territorio de la República mexicana por las fuerzas de los Estados-Unidos quedará consumada á los tres meses del cange de las ratificaciones, ó antes si fuére posible, comprometiendose á la vez el Gobierno mexicano, como en el artículo anterior, á usar de todos los medios que estén en su poder para facílitar la tal evacuacion, hacerla cómoda á las tropas americanas, y promover entre ellas y los habitantes una buena inteligencia.

Sin embargo si la ratificacion del presente Tratado por ambas partes no tuviére efecto en tiempo que permita que el embarque de las tropas de los Estados-Unidos se complete, antes de qui comience la estacion malsana en los puertos mexicanos del golfo de México; en tal caso se hará un arreglo amistoso entre el gobierno mexicano y el General en gefe de dichas tropas, y por medio de este arreglo se señalarán lugares salubres y convenientes (que no disten de los puertos mas de treinta leguas) para que residan en ellos hasta la vuelta de la estacion sana las tropas que aun no se hayan embarcado. Y queda entendido que el espacio de tiempo de que aquí se habla, como comprensivo de la estacion malsana, se extiende desde el dia primero de Mayo hasta el dia primero de Noviembre.

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All prisoners of war taken on either side, on land or on sea, shall be restored as soon as practicable after the exchange of ratifications of this treaty. It is also agreed that if any Mexicans should now be held as captives by any savage tribe within the limits of the United States, as about to be established by the following Article, the Government of the said United States will exact the release of such captives, and cause them to be restored to their country.

Todos los prisioneros de guerra tomados en mar ó tierra por ambas partes se restituirán á la mayor brevedad posible despues del cange de las ratificaciones del presente Tratado. Queda tambien convenido que si algunos mexicanos estuviéren ahora cautivos en poder de alguna tríbu salvage dentro de los límites que por el siguiente artículo van á fijarse á los Estados-Unidos, el Gobierno de los mismos Estados-Unidos exigirá su libertad y los hará restituir á su pays.

ARTICLE V.

The Boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of it's deepest branch, if it should have more than one branch emptying directly into the sea; from thence, up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called *Paso*) to it's western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; (or if it should not intersect any branch of that river, then, to the

ARTÍCULO V.

La línea divisoria entre las dos Repúblicas comenzará en el golfo de México tres leguas fuera de tierra frente á la desembocadura del rio Grande, llamado por otro nombre rio Bravo del Norte, ó del mas profundo de sus brazos, si en la desembocadura tuviére varios brazos: correrá por mitad de dicho rio, siguiendo el canal mas profundo, donde tenga mas de un canal, hasta el punto en que dicho rio corta el lindero meridional de Nuevo-México; continuará luego hácia occidente por todo este lindero meridional (que corre al Norte del pueblo llamado *Paso*) hasta su término por el lado de occidente: desde allí subirá la linea divisoria hácia el Norte por el lindero occidental de Nuevo-México, hasta donde este lindero esté cortado por el primer brazo del rio Gila; (y si no está cortado

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point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence, across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

The southern and western limits of New Mexico, mentioned in this Article, are those laid down in the Map, entitled "*Map of the United Mexican States, as organized and defined by various acts of the Congress of said Republic, and constructed according to the best Authorities. Revised Edition. Published at New York in 1847 by J. Disturnell:*" of which Map a Copy is added to this treaty, bearing the signatures and seals of the Undersigned Plenipotentiaries. And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line, drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean, distant one marine league due south of the southernmost point of the Port of San Diego, according to the plan of said port, made in the year 1782 by Don Juan Pantoja, second sailing mas-

por ningun brazo del rio Gila, entonces hasta el punto del mismo lindero occidental mas cercano al tal brazo, y de allí en una línea recta al mismo brazo): continuará despues por mitad de este brazo y del rio Gila hasta su confluencia con el rio Colorado; y desde la confluencia de ambos rios la línea divisoria, cortando el Colorado, seguirá el límite que separa la Alta de la Baja California hasta el mar Pacífico.

Los linderos meridional y occidental de Nuevo-México, de que habla este artículo, son los que se marcan en la Carta titulada: *Mapa de los Estados-Unidos de México, segun lo organizado y definido por las varias Actas del Congreso de dicha República y construido por las mejores autoridades: Edicion revisada que publicó en Nueva-York en 1847 J. Disturnell*, de la cual se agrega un ejemplar al presente Tratado, firmado y sellado por los Plenipotenciarios infrascriptos. Y para evitar toda dificultad al trazar sobre la tierra el límite que separa la Alta de la Baja California, queda convenido que dicho límite consistirá en una linea recta tirada desde la mitad del rio Gila en el punto donde se une con el Colorado, hasta un punto en la costa del mar Pacífico, distante una legua marina al Sur del punto mas meridional del puerto de San Diego, segun este Puerto está dibujado en el plano que levantó el año de 1782 el segundo

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ter of the Spanish fleet, and published at Madrid in the year 1802, in the Atlas to the voyage of the schooners *Sutil* and *Mexicana:* of which plan a copy is hereunto added, signed and sealed by the respective plenipotentiaries.

In order to designate the Boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both Republics, as described in the present Article, the two Governments shall each appoint a Commissioner and a Surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the Port of San Diego, and proceed to run and mark the said boundary in it's whole course, to the Mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result, agreed upon by them, shall be deemed a part of this Treaty, and shall have the same force as if it were inserted therein. The two Governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

The Boundary line established by this Article shall be religiously respected by each of the two Republics, and no change shall ever be made therein, except by the express and free consent of both

Piloto de la Armada española Don Juan Pantoja, y se publicó en Madrid el de 1802 en el átlas para el viage de las goletas Sutil y Mexicana; del cual Plano se agrega copia firmada y sellada por los Plenipotenciarios respectivos.

Para consignar la linea divisoria con la precision debida en mapas fehacientes, y para establecer sobre la tierra mojones que pongan á la vista los límites de ambas Repúblicas, segun quedan descritos en el presente artículo, nombrará cada uno de los dos Gobiernos un comisario y un agrimensor que se juntarán antes del término de un año contado desde la fecha del cange de las ratificaciones de este Tratado, en el Puerto de San Diego, y procederán á señalar y demarcar la expresada linea divisoria en todo su curso hasta la desembocadura del rio Bravo del Norte. Llevarán diarios y levantarán planos de sus operaciones: y el resultado convenido por ellos se tendrá por parte de este Tratado, y tendrá la misma fuerza que si estuviése inserto en él; debiendo convenir amistosamente los dos Gobiernos en el arreglo de cuanto necesiten estos individuos, y en la escolta respectiva que deban llevar, siempre que se crea necesario.

La linea divisoria que se establece por este artículo será religiosamente respetada por cada una de las dos Repúblicas, y ninguna variacion se hará jamás en ella, sino de expreso y libre consenti-

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nations, lawfully given by the General Government of each, in conformity with it's own constitution.

ARTICLE VI.

The Vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the Gulf of California, and by the River Colorado below it's confluence with the Gila, to and from their possessions situated north of the Boundary line defined in the preceding Article: it being understood, that this passage is to be by navigating the Gulf of California and the River Colorado, and not by land, without the express consent of the Mexican Government.

If, by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal or railway, which should, in whole or in part, run upon the river Gila, or upon it's right or it's left bank, within the space of one marine league from either margin of the river, the Governments of both Republics will form an agreement regarding it's construction, in order that it may serve equally for the use and advantage of both countries.

ARTICLE VII.

The river Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of

miento de ambas naciones, otorgado legalmente por el Gobierno general de cada una de ellas, con arreglo á su propia constitucion.

ARTÍCULO VI.

Los buques y ciudadanos de los Estados-Unidos tendrán en todo tiempo un libre y no interrumpido tránsito por el golfo de California y por el rio Colorado desde su confluencia con el Gila para sus posesiones y desde sus posesiones sitas al Norte de la linea divisoria que queda marcada en el artículo precedente; entendiéndose que este tránsito se ha de hacer navegando por el golfo de California y por el rio Colorado, y no por tierra sin expreso consentimiento del Gobierno mexicano.

Si por reconocimientos que se practiquen se comprobáre la posibilidad y conveniencia de construir un camino, canal ó ferrocarril que en todo ó en parte corra sobre el rio Gila ó sobre alguna de sus márgenes derecha ó izquierda en la latitud de una legua marina de uno ó de otro lado del rio, los Gobiernos de ambas Repúblicas se pondrán de acuerdo sobre su construccion á fin de que sirva igualmente para el uso y provecho de ambos paises.

ARTÍCULO VII.

Como el rio Gila y la parte del rio Bravo del Norte que corre bajo el lindero meridional de

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New Mexico, being, agreeably to the fifth Article, divided in the middle between the two Republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right: not even for the purpose of favouring new methods of navigation. Nor shall any tax or contribution, under any denomination or title, be levied upon vessels or persons navigating the same, or upon merchandise or effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both Governments.

The stipulations contained in the present Article shall not impair the territorial rights of either Republic, within it's established limits.

Nuevo-Mexico se dividen por mitad entre las dos Repúblicas, segun lo establecido en el artículo quinto, la navegacion en el Gila y en la parte que queda indicada del Bravo será libre y comun á los buques y ciudadanos de ambos paises, sin que por alguno de ellos pueda hacerse (sin consentimiento del otro) ninguna obra que impida ó interrumpa en todo ó en parte el ejercicio de este derecho, ni aun con motivo de favorecer nuevos métodos de navegacion. Tampoco se podrá cobrar (sino en el caso de desembarco en alguna de sus riberas) ningun impuesto ó contribucion bajo ninguna denominacion ó título á los buques, efectos, mercancias ó personas que naveguen en dichos rios. Si para hacerlos ó mantenerlos navegables fuere necesario ó conveniente establecer alguna contribucion ó impuesto, no podrá esto hacerse sin el consentimiento de los dos Gobiernos.

Las estipulaciones contenidas en el presente artículo dejan ilesos los derechos territoriales de una y otra República dentro de los límites que les quedan marcados.

Article VIII.

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to

Artículo VIII.

Los mexicanos establecidos hoy en territorios pertenecientes antes á México y que quedan para lo futuro dentro de los límites señalados por el presente Tratado á los Estados-Unidos, podrán perma-

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continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please; without their being subjected, on this account, to any contribution, tax or charge whatever.

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty: and those who shall remain in the said territories, after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans, not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it, guaranties equally ample as if the same belonged to citizens of the United States.

necer en donde ahora habitan, ó trasladarse en cualquier tiempo á la República mexicana, conservando en los indicados territorios los bienes que poseen, ó enagenándolos y pasando su valor á donde les convenga, sin que por esto pueda exigírseles ningun género de contribucion, gravámen ó impuesto.

Los que prefieran permanecer en los indicados territorios, podrán conservar el título y derechos de ciudadanos mexicanos, ó adquirir el título y derechos de ciudadanos de los Estados-Unidos. Mas la eleccion entre una y otra ciudadanía deberán hacerla dentro de un año contado desde la fecha del cange de las ratificaciones de este Tratado. Y los que permaneciéren en los indicados territorios despues de transcurrido el año, sin haber declarado su intencion de retener el carácter de mexicanos, se considerará que han elegido ser ciudadanos de los Estados-Unidos.

Las propiedades de todo género existentes en los expresados territorios, y que pertenecen ahora á mexicanos no establecidos en ellos, serán respetadas inviolablemente. Sus actuales dueños, los herederos de estos, y los mexicanos que en lo venidero puedan adquirir por contrato las indicadas propiedades, disfrutarán respecto de ellas tan amplia garantia, como si perteneciesen á ciudadanos de los Estados-Unidos.

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ARTICLE IX.

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States and be admitted, at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

ARTÍCULO IX.

Los Mexicanos que, en los territorios antedichos, no conserven el caracter de ciudadanos de la República Mexicana, segun lo estipulado en el artículo precedente, serán incorporados en la Union de los Estados Unidos, y se admitirán en tiempo oportuno (á juicio del Congreso de los Estados Unidos) al goce de todos los derechos de ciudadanos de los Estados Unidos conforme á los principios de la constitucion; y entretanto serán mantenidos y protejidos en el goce de su libertad y propiedad, y asegurados en el libre ejercicio de su religion sin restriccion alguna.

[One of the amendments of the Senate struck out Article 10.]

ARTICLE XI.

Considering that a great part of the territories which, by the present Treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive controul of the Government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme; it is solemnly agreed that all such incursions shall be forcibly restrained by the Government of the United States, whensoever this may be necessary; and

ARTÍCULO XI.

En atencion á que una gran parte de los territorios que por el presente Tratado van á quedar para lo futuro dentro de los límites de los Estados-Unidos se halla actualmente ocupada por tríbus salvages, que han de estar en adelante bajo la exclusiva autoridad del Gobierno de los Estados-Unidos, y cuyas incursiones sobre los distritos mexicanos serian en extremo perjudiciales; está solemnemente convenido que el mismo Gobierno de los Estados-Unidos contendrá las indicadas incursiones por medio de la fuerza

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that when they cannot be prevented, they shall be punished by the said Government, and satisfaction for the same shall be exacted: all in the same way, and with equal diligence and energy, as if the same incursions were meditated or committed within it's own territory against it's own citizens.

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States, to purchase or acquire any Mexican or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the territory of either of the two Republics, nor to purchase or acquire horses, mules, cattle or property of any kind, stolen within Mexican territory by such Indians.

And, in the event of any person or persons, captured within Mexican Territory by Indians, being carried into the territory of the United States, the Government of the latter engages and binds itself in the most solemn manner, so soon as it shall know of such captives being within it's territory, and shall be able so to do, through the faithful exercise of it's influence and power, to rescue them and return them to their country, or deliver them to the agent or representative of the Mexican Government. The Mexican Authorities will, as far as practicable,

siempre que así sea necesario; y cuando no pudiére prevenirlas, castigará y escarmentará á los invasores, exigiéndoles ademas la debida reparacion: todo del mismo modo y con la misma diligencia y energia con que obraria, si las incursiones se hubiesen meditado ó ejecutado sobre territorios suyos ó contra sus propios ciudadanos.

A ningun habitante de los Estados-Unidos será lícito bajo ningun pretesto comprar ó adquirir cautivo alguno, mexicano ó extrangero residente en México, apresado por los indios habitantes en territorio de cualquiera de las dos Repúblicas, ni los caballos, mulas, ganados, ó cualquiera otro género de cosas que hayan robado dentro del territorio mexicano.

Y en caso de que cualquier persona ó personas cautivadas por los indios dentro del territorio mexicano sean llevadas al territorio de los Estados-Unidos, el Gobierno de dichos Estados-Unidos se compromete y liga de la manera mas solemne, en cuanto le sea posible, á rescatarlas, y á restituirlas á su pays ó entregarlas al agente ó representante del Gobierno mexicano, haciendo todo esto, tan luego como sepa que los dichos cautivos se hallan dentro de su territorio, y empleando al efecto el leal ejercicio de su influencia y poder. Las autoridades

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give to the Government of the United States notice of such captures; and it's agent shall pay the expenses incurred in the maintenance and transmission of the rescued captives; who, in the mean time, shall be treated with the utmost hospitality by the American authorities at the place where they may be. But if the Government of the United States, before receiving such notice from Mexico, should obtain intelligence through any other channel, of the existence of Mexican captives within it's territory, it will proceed forthwith to effect their release and delivery to the Mexican agent, as above stipulated.

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the Government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And finally, the sacredness of this obligation shall never be lost sight of by the said Government, when providing for the removal of the Indians from any portion of the said territories, or for it's being settled by citizens of the United States; but on the contrary special care shall then be taken not to place it's Indian occupants under the necesmexicanas darán á las de los Estados-Unidos, segun sea practicable, una noticia de tales cautivos; y el agente mexicano pagará los gastos erogados en el mantenimiento y remision de los que se rescaten, los cuales entre tanto serán tratados con la mayor hospitalidad por las autoridades Americanas del lugar en que se encuentren. Mas si el Gobierno de los Estados-Unidos antes de recibir aviso de México, tuviére noticia por cualquiera otro conducto de existir en su territorio cautivos mexicanos, procederá desde luego á verificar su rescate y entrega al agente mexicano, segun queda convenido.

Con el objeto de dar á estas estipulaciones la mayor fuerza posible, y afianzar al mismo tiempo la seguridad y las reparaciones que exige el verdadero espíritu é intencion con que se han ajustado, el Gobierno de los Estados-Unidos dictará sin inútiles dilaciones, ahora y en lo de adelante las leyes que requiera la naturaleza del asunto, y vigilará siempre sobre su ejecucion. Finalmente el Gobierno de los mismos Estados-Unidos tendrá muy presente la santidad de esta obligacion siempre que tenga que desalojar á los indios de cualquier punto de los indicados territorios, ó que establecer en él á ciudadanos suyos; y cuidará muy especialmente de que no se ponga á los indios que

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sity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

ARTICLE XII.

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth Article of the present Treaty, the Government of the United States engages to pay to that of the Mexican Republic the sum of fifteen Millions of Dollars.

Immediately after this treaty shall have been duly ratified by the Government of the Mexican Republic, the sum of three millions of dollars shall be paid to the said Government by that of the United States at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place and in the same coin, in annual instalments of three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions, from the day of the ratification of the present treaty by the Mexican Government, and the first of the instalments shall be paid at the expiration of one year from the same

ocupaban antes aquel punto, en necesidad de buscar nuevos hogares por medio de las incursiones sobre los distritos mexicanos, que el Gobierno de los Estados-Unidos se ha comprometido solemnemente á reprimir.

ARTÍCULO XII.

En consideracion á la estension que adquieren los límites de los Estados-Unidos, segun quedan descritos en el artículo quinto del presente Tratado, el Gobierno de los mismos Estados-Unidos se compromete á pagar al de la Republica mexicana la suma de quince millones de pesos.

Inmediatamente despues que este Tratado haya sido ratificado por el Gobierno de la República mexicana, se entregará al mismo Gobierno por el de los Estados-Unidos, en la ciudad de Mexico, y en moneda de plata ú oro del cuño mexicano, la suma de tres millones de pesos. Los doce millones de pesos restantes se pagarán en México, en moneda de plata ú oro del cuño mexicano, en abonos de tres millones de pesos cada año, con un rédito de seis por ciento anual: este rédito comienza á correr para toda la suma de los doce millones el dia de la ratificacion del presente Tratado por el Gobierno mexicano, y con cada abono anual de capital se pagará el rédito que corresponda á la suma abonada. Los plazos para los abonos de capital corren desde

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day. Together with each annual instalment, as it falls due, the whole interest accruing on such instalment from the beginning shall also be paid.

el mismo dia que empiezan á causarse los réditos.

ARTICLE XIII.

The United States engage moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated and decided against the Mexican Republic, under the conventions[1] between the two Republics severally concluded on the eleventh day of April eighteen hundred and thirty-nine, and on the thirtieth day of January eighteen hundred and forty three: so that the Mexican Republic shall be absolutely exempt for the future, from all expense whatever on account of the said claims.

ARTÍCULO XIII.

Se obliga ademas el Gobierno de los Estados-Unidos á tomar sobre sí, y satisfacer cumplidamente á los reclamantes, todas las cantidades que hasta aquí se les deben y cuantas se venzan en adelante por razon de las reclamaciones ya liquidadas y sentenciadas contra la República mexicana conforme á los convenios[1] ajustados entre ambas Repúblicas el once de Abril de mil ochocientos treinta y nueve, y el treinta de Enero de mil ochocientos cuarenta y tres; de manera que la República mexicana nada absolutamente tendrá que lastar en lo venidero, por razon de los indicados reclamos.

ARTICLE XIV.

The United States do furthermore discharge the Mexican Republic from all claims of citizens of the United States, not heretofore decided against the Mexican Government, which may have arisen previously to the date of the signature of this treaty: which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the Board of Commissioners provided

ARTÍCULO XIV.

Tambien exoneran los Estados-Unidos á la República mexicana de todas las reclamaciones de ciudadanos de los Estados-Unidos no decididas aun contra el Gobierno mexicano, y que puedan haberse originado antes de la fecha de la firma del presente Tratado. Esta exoneracion es definitiva y perpetua, bien sea que las dichas reclamaciones se admitan, bien sea que se desechen por el tribunal

[1] Documents 89 and 100.

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for in the following Article, and whatever shall be the total amount of those allowed.

ARTICLE XV.

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding Article, and considering them entirely and forever cancelled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one quarter millions of Dollars. To ascertain the validity and amount of those claims, a Board of Commissioners shall be established by the Government of the United States, whose awards shall be final and conclusive: provided that in deciding upon the validity of each claim, the board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth Articles[1] of the unratified convention, concluded at the City of Mexico on the twentieth day of November, one thousand eight hundred and forty-three; and in no case shall an award be made in favour of any claim not embraced by these principles and rules.

If, in the opinion of the said Board of Commissioners, or of the claimants, any books, records or

de Comisarios de que habla el artículo siguiente, y cualquiera que pueda ser el monto total de las que queden admitidas.

ARTÍCULO XV.

Los Estados-Unidos exonerando á México de toda responsabilidad por las reclamaciones de sus ciudadanos mencionadas en el artículo precedente, y considerándolas completamente chanceladas para siempre, sea cual fuére su monto, toman á su cargo satisfacerlas hasta una cantidad que no exceda de tres millones doscientos cincuenta mil pesos. Para fijar el monto y validez de estas reclamaciones, se establecerá por el Gobierno de los Estados-Unidos un Tribunal de Comisarios, cuyos fallos serán definitivos y concluyentes, con tal que al decidir sobre la validez de dichas reclamaciones, el tribunal se haya guiado y gobernado por los principios y reglas de decision establecidos en los artículos[1] primero y quinto de la convencion, no ratificada, que se ajustó en la ciudad de México el veinte de Noviembre de mil ochocientos cuarenta y tres: y en ningun caso se dará fallo en favor de ninguna reclamacion que no esté comprendida en las reglas y principios indicados.

Si en juicio del dicho tribunal de Comisarios, ó en el de los reclamantes se necesitáre para la

[1] For the text of those articles, see the editorial notes.

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documents in the possession or power of the Government of the Mexican Republic, shall be deemed necessary to the just decision of any claim, the Commissioners or the claimants, through them, shall, within such period as Congress may designate, make an application in writing for the same, addressed to the Mexican Minister for Foreign Affairs, to be transmitted by the Secretary of State of the United States; and the Mexican Government engages, at the earliest possible moment after the receipt of such demand, to cause any of the books, records or documents, so specified, which shall be in their possession or power, (or authenticated Copies or extracts of the same) to be transmitted to the said Secretary of State, who shall immediately deliver them over to the said Board of Commissioners: provided that no such application shall be made, by, or at the instance of, any claimant, until the facts which it is expected to prove by such books, records or documents, shall have been stated under oath or affirmation.

ARTICLE XVI.

Each of the contracting parties reserves to itself the entire right to fortify whatever point within it's territory, it may judge proper so to fortify, for it's security.

justa decision de cualquier reclamacion algunos libros, papeles de archivo ó documentos que posea el Gobierno mexicano, ó que estén en su poder; los Comisarios, ó los reclamantes por conducto de ellos, los pedirán por escrito (dentro del plazo que designe el Congreso) dirigiéndose al Ministro mexicano de Relaciones exteriores, á quien transmitirá las peticiones de esta clase el Secretario de Estado de los Estados-Unidos: y el Gobierno mexicano se compromete á entregar á la mayor brevedad posible, despues de recibida cada demanda, los libros, papeles de archivo ó documentos, así especificados, que posea ó estén en su poder, ó copias ó extractos auténticos de los mismos, con el objeto de que sean transmitidos al Secretario de Estado, quien los pasará inmediatamente al expresado Tribunal de Comisarios. Y no se hará peticion alguna de los enunciados libros, papeles ó documentos, por ó á instancia de ningun reclamante, sin que antes se haya aseverado bajo juramento ó con afirmacion solemne la verdad de los hechos que con ellos se pretende probar.

ARTÍCULO XVI.

Cada una de las dos Repúblicas se reserva la completa facultad de fortificar todos los puntos que para su seguridad estime convenientes en su propio territorio.

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ARTICLE XVII.

The Treaty [1] of Amity, Commerce and Navigation, concluded at the city of Mexico on the fifth day of April A.D. 1831, between the United States of America and the United Mexican States, except the additional Article, and except so far as the stipulations of the said treaty may be incompatible with any stipulation contained in the present treaty, is hereby revived for the period of eight years from the day of the exchange of ratifications of this treaty, with the same force and virtue as if incorporated therein; it being understood that each of the contracting parties reserves to itself the right, at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

ARTÍCULO XVII.

El Tratado [1] de Amistad, Comercio y Navegacion concluido en la ciudad de Mexico el cinco de Abril del año del Señor 1831, entre la República mexicana y los Estados-Unidos de América, esceptuandose el artículo adicional y cuanto pueda haber en sus estipulaciones incompatible con alguna de las contenidas en el presente Tratado, queda restablecido por el periodo de ocho años desde el dia del cange de las ratificaciones del mismo presente Tratado, con igual fuerza y valor que si estuviese inserto en él; debiendo entenderse que cada una de las partes contratantes se reserva el derecho de poner término al dicho Tratado de Comercio y Navegacion en cualquier tiempo luego que haya expirado el periodo de los ocho años, comunicando su intencion á la otra parte con un año de anticipacion.

ARTICLE XVIII.

All supplies whatever for troops of the United States in Mexico, arriving at ports in the occupation of such troops, previous to the final evacuation thereof, although subsequently to the restoration of the Custom Houses at such ports, shall be entirely exempt from duties and charges of any kind: the Government of the United States hereby engaging and pledging it's faith to establish, and

ARTÍCULO XVIII.

No se exigirán derechos ni gravámen de ninguna clase á los artículos todos que lleguen para las tropas de los Estados-Unidos á los puertos mexicanos ócupados por ellas, antes de la evacuacion final de los mismos puertos y despues de la devolucion á México de las Aduanas situadas en ellos. El Gobierno de los Estados-Unidos se compromete á la vez, y sobre esto empeña su fé, á

[1] Document 70.

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vigilantly to enforce, all possible guards for securing the revenue of Mexico, by preventing the importation, under cover of this stipulation, of any articles, other than such, both in kind and in quantity, as shall really be wanted for the use and consumption of the forces of the United States during the time they may remain in Mexico. To this end, it shall be the duty of all officers and agents of the United States to denounce to the Mexican Authorities at the respective ports, any attempts at a fraudulent abuse of this stipulation, which they may know of or may have reason to suspect, and to give to such authorities all the aid in their power with regard thereto: and every such attempt, when duly proved and established by sentence of a competent tribunal, shall be punished by the confiscation of the property so attempted to be fraudulently introduced.

establecer y mantener con vigilancia quantos guardas sean posibles para asegurar las rentas de México, precaviendo la importacion, á la sombra de esta estipulacion, de cualesquiera artículos que realmente no sean necesarios, ó que excedan en cantidad de los que se necesiten para el uso y consumo de las fuerzas de los Estados-Unidos mientras ellas permanezcan en México. A este efecto todos los oficiales y agentes de los Estados-Unidos tendrán obligacion de denunciar á las autoridades mexicanas en los mismos puertos qualquier conato de fraudulento abuso de esta estipulacion que pudiéren conocer ó tuvieren motivo de sospechar; así como de impartir á las mismas autoridades todo el auxilio que pudiéren con este objeto. Y cualquier conato de esa clase, que fuére legalmente probado, y declarado por sentencia de tribunal competente, será castigado con el comiso de la cosa que se haya intentado introducir fraudulentamente.

ARTICLE XIX.

With respect to all merchandise, effects and property whatsoever, imported into ports of Mexico whilst in the occupation of the forces of the United States, whether by citizens of either republic, or by citizens or subjects of any neutral nation, the following rules shall be observed:

ARTÍCULO XIX.

Respecto de los efectos, mercancias y propiedades importados en los puertos mexicanos durante el tiempo que han estado ocupados por las fuerzas de los Estados-Unidos, sea por ciudadanos de cualquiera de las dos Repúblicas, sea por ciudadanos ó subditos de alguna nacion neutral, se observarán las reglas siguientes:

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I. All such merchandise, effects and property, if imported previously to the restoration of the Custom Houses to the Mexican Authorities, as stipulated for in the third Article of this treaty, shall be exempt from confiscation, although the importation of the same be prohibited by the Mexican tariff.

II. The same perfect exemption shall be enjoyed by all such merchandise, effects and property, imported subsequently to the restoration of the Custom Houses, and previously to the sixty days fixed in the following Article for the coming into force of the Mexican tariff at such ports respectively: the said merchandise, effects and property being, however, at the time of their importation, subject to the payment of duties, as provided for in the said following Article.

III. All merchandise, effects and property described in the two rules foregoing, shall, during their continuance at the place of importation, or upon their leaving such place for the interior, be exempt from all duty, tax or impost of every kind, under whatsoever title or denomination. Nor shall they be there subjected to any charge whatsoever upon the sale thereof.

IV. All merchandise, effects and property, described in the first and second rules, which shall have been removed to any place in the

I. Los dichos efectos, mercancias y propiedades siempre que se hayan importado antes de la devolucion de las Aduanas á las autoridades mexicanas conforme á lo estipulado en el artículo tercero de este Tratado, quedarán libres de la pena de comiso aun cuando sean de los prohibidos en el arancel mexicano.

II. La misma exencion gozarán los efectos, mercancias y propiedades que lleguen á los puertos mexicanos, despues de la devolucion á México de las Aduanas marítimas y antes de que expiren los sesenta dias que van á fijarse en el artículo siguiente para que empieze á regir el arancél mexicano en los puertos; debiendo al tiempo de su importacion sujetarse los tales efectos, mercancias y propiedades, en cuanto al pago de derechos, á lo que en el indicado siguiente artículo se establece.

III. Los efectos, mercancias y propiedades designados en las dos reglas anteriores quedarán exentos de todo derecho, alcabála ó impuesto, sea bajo el título de internacion, sea bajo cualquiera otro, mientras permanezcan en los puntos donde se hayan importado, y á su salida para el interior; y en los mismos puntos no podrá jamás exigirse impuesto alguno sobre su venta.

IV. Los efectos, mercancias y propiedades designados en las reglas primera y segunda que hayan sido internados á cualquier

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interior, whilst such place was in the occupation of the forces of the United States, shall, during their continuance therein, be exempt from all tax upon the sale or consumption thereof, and from every kind of impost or contribution, under whatsoever title or denomination.

V. But if any merchandise, effects or property, described in the first and second rules, shall be removed to any place not occupied at the time by the forces of the United States, they shall, upon their introduction into such place, or upon their sale or consumption there, be subject to the same duties, which, under the Mexican laws, they would be required to pay in such cases, if they had been imported in time of peace through the Maritime Custom Houses, and had there paid the duties conformably with the Mexican tariff.

VI. The owners of all merchandise, effects or property, described in the first and second rules, and existing in any port of Mexico, shall have the right to reship the same, exempt from all tax, impost or contribution whatever.

With respect to the metals, or other property exported from any Mexican port, whilst in the occupation of the forces of the United States, and previously to the restoration of the Custom House at such port, no person shall be required by the Mexican Authorities,

lugar ocupado por fuerzas de los Estados-Unidos, quedarán exentos de todo derecho sobre su venta ó consumo, y de todo impuesto ó contribucion bajo cualquier título ó denominacion, mientras permanezcan en el mismo lugar.

V. Mas si algunos efectos, mercancias ó propiedades de los designados en las reglas primera y segunda se trasladáren á algun lugar no ocupado á la sazon por las fuerzas de los Estados-Unidos; al introducirse á tal lugar, ó al venderse ó consumirse en él, quedarán sujetos á los mismos derechos que bajo las leyes mexicanas deberian pagar en tales casos si se hubiéran importado en tiempo de paz por las Aduanas marítimas, y hubiesen pagado en ellas los derechos que establece el arancél mexicano.

VI. Los dueños de efectos, mercancias y propiedades designados en las reglas primera y segunda, y existentes en algun puerto de México, tienen derecho de reembarcarlos, sin que pueda exigírseles ninguna clase de impuesto, alcabála ó contribucion.

Respecto de los metales y de toda otra propiedad exportados por cualquier puerto mexicano durante su ocupacion por las fuerzas Americanas y antes de la devolucion de su Aduana al Gobierno mexicano, no se exigirá á ninguna persona por las autoridades

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whether General or State, to pay any tax, duty or contribution upon any such exportation, or in any manner to account for the same to the said Authorities.

ARTICLE XX.

Through consideration for the interests of commerce generally, it is agreed, that if less than sixty days should elapse between the date of the signature of this treaty and the restoration of the Custom Houses, conformably with the stipulation in the third Article, in such case, all merchandise, effects and property whatsoever, arriving at the Mexican ports after the restoration of the said Custom Houses, and previously to the expiration of sixty days after the day of the signature of this treaty, shall be admitted to entry; and no other duties shall be levied thereon than the duties established by the tariff found in force at such Custom Houses, at the time of the restoration of the same. And to all such merchandise, effects and property, the rules established by the preceding Article shall apply.

ARTICLE XXI.

If unhappily any disagreement should hereafter arise between the Governments of the two Republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to

de Mexico, ya dependan del Gobierno general, ya de algun Estado que pague ningun impuesto, alcabála ó derecho por la indicada exportacion, ni sobre ella podrá exigírsele por las dichas autoridades cuenta alguna.

ARTÍCULO XX.

Por consideracion á los intereses del comercio de todas las naciones queda convenido que si pasáren menos de sesenta dias desde la fecha de la firma de este Tratado hasta que se haga la devolucion de las Aduanas marítimas, segun lo estipulado en el artículo tercero; todos los efectos, mercancias y propiedades que lleguen á los puertos mexicanos desde el dia en que se verifique la devolucion de las dichas Aduanas hasta que se completen sesenta dias contados desde la fecha de la firma del presente Tratado, se admitirán no pagando otros derechos que los establecidos en la tarifa que esté vigente en las expresadas Aduanas al tiempo de su devolucion, y se extenderán á dichos efectos, mercancias y propiedades las mismas reglas establecidas en el artículo anterior.

ARTÍCULO XXI.

Si desgraciadamente en el tiempo futuro se suscitáre algun punto de desacuerdo entre los Gobiernos de las dos Repúblicas, bien sea sobre la inteligencia de alguna estipulacion de este Tratado, bien

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any other particular concerning the political or commercial relations of the two Nations, the said Governments, in the name of those Nations, do promise to each other, that they will endeavour in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship, in which the two countries are now placing themselves: using, for this end, mutual representations and pacific negotiations. And, if by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression or hostility of any kind, by the one Republic against the other, until the Government of that which deems itself aggrieved, shall have maturely considered, in the spirit of peace and good neighbourship, whether it would not be better that such difference should be settled by the arbitration of Commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

sobre cualquiera otra materia de las relaciones políticas ó comerciales de las dos Naciones, los mismos Gobiernos á nombre de ellas se comprometen á procurar de la manera mas sincera y empeñosa allanar las diferencias que se presenten y conservar el estado de paz y amistad en que ahora se ponen los dos payses, usando al efecto de representaciones mútuas y de negociaciones pacíficas. Y si por estos medios no se lográre todavia ponerse de acuerdo, no por eso se apelará á represalia, agresion ni hostilidad de ningun género de una República contra otra hasta que el Gobierno de la que se crea agraviada haya considerado maduramente y en espíritu de paz y buena vecindad si no seria mejor que la diferencia se terminára por un arbitramento de Comisarios nombrados por ambas partes, ó de una nacion amiga. Y si tal medio fuére propuesto por cualquiera de las dos partes, la otra accederá á él, á no ser que lo juzgue absolutamente incompatible con la naturaleza y circunstancias del caso.

ARTICLE XXII.

If (which is not to be expected, and which God forbid!) war should unhappily break out between the two Republics, they do

ARTÍCULO XXII.

Si (lo que no es de esperarse, y Dios no permita) desgraciadamente se suscitáre guerra entre las dos Republicas, estas para el

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now, with a view to such calamity, solemnly pledge themselves to each other and to the world, to observe the following rules: absolutely, where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible.

I. The merchants of either Republic, then residing in the other, shall be allowed to remain twelve months (for those dwelling in the interior) and six months (for those dwelling at the sea-ports) to collect their debts and settle their affairs; during which periods, they shall enjoy the same protection, and be on the same footing, in all respects, as the citizens or subjects of the most friendly nations; and, at the expiration thereof, or at any time before, they shall have full liberty to depart, carrying off all their effects, without molestation or hindrance: conforming therein to the same laws, which the citizens or subjects of the most friendly nations are required to conform to. Upon the entrance of the armies of either nation into the territories of the other, women and children, ecclesiastics, scholars of every faculty, cultivators of the earth, merchants, artizans, manufacturers and fishermen, unarmed and inhabiting unfortified towns, villages or places, and in general all persons whose occupations are

caso de tal calamidad se comprometen ahora solemnemente, ante sí mismas y ante el mundo á observar las reglas siguientes de una manera absoluta si la naturaleza del objeto á que se contraen, lo permite; y tan extrictamente como sea dable en todos los casos en que la absoluta observancia de ellas fuére imposible.

I. Los comerciantes de cada una de las dos Repúblicas que á la sazon residan en territorio de la otra, podrán permanecer doce meses los que residan en el interior, y seis meses los que residan en los puertos para recoger sus deudas y arreglar sus negocios; durante estos plazos disfrutarán la misma proteccion y estarán sobre el mismo pié en todos respectos, que los ciudadanos ó súbditos de las naciones mas amigas; y al expirar el término, ó antes de él, tendrán completa libertad para salir y llevar todos sus efectos sin molestia ó embarazo, sujetándose en este particular á las misma leyes á que estén sujetos y deban arreglarse los ciudadanos ó súbditos de las naciones mas amigas. Cuando los ejércitos de una de las dos naciones entren en territorios de la otra, las mujeres y niños, los eclesiásticos, los estudiantes de cualquier facultad, los labradores, comerciantes, artesanos, manufactureros, y pescadores que estén desarmados y residan en ciudades, pueblos ó lugares no fortificados, y en general todas

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for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, unmolested in their persons. Nor shall their houses or goods be burnt or otherwise destroyed: nor their cattle taken, nor, their fields wasted, by the armed force, into whose power, by the events of war, they may happen to fall; but if the necessity arise to take any thing from them for the use of such armed force, the same shall be paid for at an equitable price. All churches, hospitals, schools, colleges, libraries and other establishments for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties and the pursuit of their vocations.

II. In order that the fate of prisoners of war may be alleviated, all such practices as those of sending them into distant, inclement or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison-ships or prisons; nor be put in irons, or bound, or otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldiers

las personas cuya ocupacion sirva para la comun subsistencia y beneficio del género humano, podrán continuar en sus ejercicios sin que sus personas sean molestadas. No serán incendiadas sus casas ó bienes, ó destruidos de otra manera; ni serán tomados sus ganados, ni devastados sus campos por la fuerza armada en cuyo poder puedan venir á caer por los acontecimientos de la guerra; pero si hubiére necesidad de tomarlos alguna cosa para el uso de la misma fuerza armada, se les pagará lo tomado á un precio justo. Todas las iglesias, hospitales, escuelas, colegios, librerias y demas establecimientos de caridad y beneficencia serán respetados; y todas las personas que dependan de los mismos, serán protegidas en el desempeño de sus deberes y en la continuacion de sus profesiones.

II. Para aliviar la suerte de los prisioneros de guerra, se evitarán ciudadosamente las prácticas de enviarlos á distritos distantes, inclementes ó malsanos, ó de aglomerarlos en lugares estrechos y enfirmizos. No se confinarán en calabozos, prisiones ni pontones; no se les aherrojará, ni se les atará, ni se les impedirá de ningun otro modo el uso de sus miembros. Los oficiales quedarán en libertad bajo su palabra de honor, dentro de distritos convenientes, y tendrán alojamientos cómodos; y los soldados rasos se colocarán en

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shall be disposed in cantonments, open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are for it's own troops. But if any officer shall break his parole by leaving the district so assigned him, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual, officer, or other prisoner shall forfeit so much of the benefit of this Article as provides for his liberty on parole or in cantonment. And if an officer so breaking his parole, or any common soldier so escaping from the limits assigned him, shall afterwards be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished by the party in whose power they are, with as many rations, and of the same articles as are allowed either in kind or by commutation, to officers of equal rank in it's own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in it's own service: the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party, on a mutual adjustment of accounts for the subsistence of prisoners; and such ac-

acantonamientos bastante despejados y extensos para la ventilacion y el ejercicio, y se alojarán en cuarteles tan ámplios y cómodos como los que use para sus propias tropas la parte que los tenga en su poder. Pero si algun oficial faltare á su palabra saliendo del distrito que se le ha señalado; ó algun otro prisionero se fugáre de los límites de su acantonamiento despues que estos se les hayan fijado, tal oficial ó prisionero perderá el beneficio del presente artículo por lo que mira á su libertad bajo su palabra ó en acantonamiento. Y si algun oficial faltando así á su palabra, ó algun soldado raso saliendo de los límites que se le han asignado fuére encontrado despues con las armas en la mano antes de ser debidamente cangeado, tal persona en esta actitud ofensiva será tratada conforme á las leyes comunes de la guerra. A los oficiales se proveerá diariamente por la parte en cuyo poder estén, de tantas raciones compuestas de los mismos artículos como las que gozan en especie ó en equivalente los oficiales de la misma graduacion en su propio ejército: á todos los demas prisioneros se proveerá diariamente de una racion semejante á la que se ministra al soldado raso en su propio servicio: el valor de todas estas suministraciones se pagará por la otra parte al concluirse la guerra, ó en los periodos que se convengan entre sus respectivos comandantes, precediendo

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counts shall not be mingled with or set off against any others, nor the balance due on them be withheld, as a compensation or reprisal for any cause whatever, real or pretended. Each party shall be allowed to keep a Commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other; which Commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties or taxes, and to distribute whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

una mútua liquidacion de las cuentas que se lleven del mantenimiento de prisioneros: tales cuentas no se mezclarán ni compensarán con otras; ni el saldo que resulte de ellas, se reusará bajo pretesto de compensacion ó represalia por cualquiera causa real ó figurada. Cada una de las partes podrá mantener un Comisario de prisioneros nombrado por ella misma en cada acantonamiento de los prisioneros que esten en poder de la otra parte: este Comisario visitará á los prisioneros siempre que quiera; tendrá facultad de recibir, libres de todo derecho ó impuesto, y de distribuir todos los auxilios que pueden enviarles sus amigos, y libremente transmitir sus partes en cartas abiertas á la autoridad por la cual está empleado.

And it is declared that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending the solemn covenant contained in this Article. On the contrary the state of war is precisely that for which it is provided; and during which it's stipulations are to be as sacredly observed as the most acknowledged obligations under the law of nature or nations.

Y se declara que ni el pretesto de que la guerra destruye los tratados, ni otro alguno, sea el que fuére, se considerará que anula ó suspende el pacto solemne contenido en este artículo. Por el contrario el estado de guerra es cabalmente el que se ha tenido presente al ajustarlo, y durante el cual sus estipulaciones se han de observar tan santamente como las obligaciones mas reconocidas de la ley natural ó de gentes.

Article XXIII.

This Treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate

Artículo XXIII.

Este Tratado será ratificado por el Presidente de la República mexicana, previa la aprobacion de su Congreso General; y por el Pre-

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thereof; and by the President of the Mexican Republic, with the previous approbation of it's General Congress: and the ratifications shall be exchanged in the city of Washington or at the seat of government of Mexico, in four months from the date of the signature hereof, or sooner if practicable.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty of Peace, Friendship, Limits and Settlement, and have hereunto affixed our seals respectively. Done in Quintuplicate at the city of Guadalupe Hidalgo on the second day of February in the Year of Our Lord one thousand eight hundred and forty-eight.

N. P. Trist.	[Seal]
Luis G. Cuevas	[Seal]
Bernardo Couto	[Seal]
Migl Atristain	[Seal]

sidente de los Estados-Unidos de América con el consejo y consentimiento del Senado; y las ratificaciones se cangearán en la ciudad de Washington ó donde estuviere el gobierno Mexicano á los cuatro meses de la fecha de la firma del mismo Tratado, ó antes si fuere posible.

En fé de lo cual, nosotros los respectivos Plenipotenciarios hemos firmado y sellado por quintuplicado este Tratado de Paz, Amistad, Límites y Arreglo definitivo; en la ciudad de Guadalupe Hidalgo el dia dos de Febrero del año de Nuestro Señor mil ochocientos cuarenta y ocho.

Bernardo Couto	[Seal]
Migl Atristain	[Seal]
Luis G. Cuevas	[Seal]
N. P. Trist.	[Seal]

NOTES

The Treaty of Guadalupe Hidalgo, as signed, comprised four papers; these are the treaty proper, the additional and secret article, the authenticated Disturnell Map, and the authenticated Plano del Puerto de S. Diego (see Article 5 of the treaty). The additional and secret article was not ratified on either part and did not go into force.

In the final clause of the treaty proper and also in the final clause of the additional and secret article are the words, "Done in Quintuplicate". It seems that three of the five examples were for the Government of the United States and two for the Government of Mexico.

In the treaty file there are two originals of each of those two papers, the treaty proper and the additional and secret article. One original of each instrument is embodied in the original proclamation of July 4, 1848, to which is attached the duplicate United States instrument of ratification of March 16, 1848, to which is in turn attached the attested Senate resolution of the previous March 10. The other original of the treaty proper and the other original of the additional

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and secret article are separate papers in the treaty file. In each of these instruments the English version is written in the left of the two columns.

There are also originals of each instrument, the treaty proper and the additional and secret article, in the Trist Papers in the Library of Congress; these are described below.

The Disturnell Map and the Plan of the Port of San Diego were, it seems, signed and sealed by the respective Plenipotentiaries in duplicate only; the treaty file contains one original example of the map and one of the plan.

The other papers in the treaty file now to be mentioned are the original instrument of ratification on the part of Mexico of May 30, 1848 (more particularly described below); the act of exchange of ratifications of the same date at Querétaro, which is in customary form, written in the two languages, the English on the left pages; and two originals of the protocol of May 26, 1848. The last-mentioned instrument is also written in English and Spanish, the former in the left columns; it is stated in its text that it was signed and sealed in quintuplicate. The protocol is printed and discussed below.

The Printed Text

Following the headnote is printed the text of the treaty proper, in English and Spanish; the text so printed is not, however, as to five of the twenty-two articles which remained [1] in the treaty, the text as signed, but the text as amended. The changes made pursuant to the Senate resolution of advice and consent are set forth in the respective instruments of ratification and are incorporated in the printed text. Accordingly, while the print here has been collated primarily with one of the two signed originals in the treaty file, the collating has, of necessity, taken into account the changes made in Articles 3, 9, 11, 12, and 23, which are described in detail below, under the heading "The Senate Amendments".

The signed original of the treaty proper which has been used for the collating is that which is a separate paper in the treaty file (called generally hereinafter the "first" original), and not that which is embodied in the original proclamation (the "second" original). There is more than one reason for the choice made. It was the first original which was received at Washington on February 19, 1848, and which was sent to the Senate with the presidential message of February 22. The second original did not reach the Department of State until February 28. The Spanish version of the first original is, on the whole, the more correct of the two. The second original, however, and not the first, was the source for the text of this treaty printed in 9 and 18 Statutes at Large and in United States treaty collections generally.

As between the two originals of the treaty proper, the variances in matters of capitalization, spelling, abbreviation, accents, etc.,

[1] The signed treaty contained twenty-three articles; one of these, Article 10, was deleted.

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need not be considered. Those of punctuation, mostly commas omitted or inserted, are fairly numerous, some forty-six in the English version and fifty-two in the Spanish; but none appears to present any arguable point of construction. In the English version two variances of wording have been noticed: after "place of importation", in Article 19, rule 3, the first original has "or" and the second "and"; in Article 22, rule 2, the fifth sentence begins "And if an officer" in the first original and "And if any officer" in the second. The variances of wording in the Spanish version are listed [1] in the following table, the second column of which gives the wording as here printed and the third column that of the second original:

Article or clause	First original	Second original
Art. 5, par. 1	al tal brazo, y de allí en una línea recta al mismo brazo): continuará	al tal brazo): continuará
Art. 11, par. 4	que ocupaban antes	que habitaban antes
Art. 15, par. 2	documentos, así especificados, que	documentos que
Art. 21	juzgue absolutamente incompatible	juzgue incompatible
Art. 22, rule 1	comerciantes, artesanos, manufactureros	comerciantes, manufactureros
Art. 22, rule 2	prisioneros: tales	prisioneros: y tales
	y libremente transmitir	y podrá libremente transmitir

The first original, with which the text above printed has been collated, has the four seals of the Plenipotentiaries not only opposite the respective signatures in each column, but also arranged in a line across the foot of the same page, holding a ribbon which at one time, no doubt, bound the sheets of the instrument together.

Following the printed text of the treaty proper (facing p. 236) is a reproduction of the Plan of the Port of San Diego mentioned in Article 5 of the treaty, of the size of the original. That original is now imperfect in its lower right-hand corner; the seals of the Mexican Plenipotentiaries are lacking; and as the writing of the signed certificate is not entirely clear, it is printed here:

This is the Plan of the Port of San Diego, referred to in the Fifth Article of the Treaty of Peace, Friendship, Limits and Settlement, between the United States of America and the Mexican Republic, signed this day.

Witness our hands and seals, at Guadalupe Hidalgo, this second day of February, one thousand eight hundred and forty-eight.

N P TRIST. [Seal]

Este es el plan del Puerto de San Diego, á que se refiere el artículo quinto del tratado de paz, amistad, límites y arreglo definitivo entre la República mejicana y los Estados Unidos de América, firmado en este dia. Y para que conste, lo firmamos y sellamos en la Ciudad de Guadalupe Hidalgo el dos de Febrero de mil ochocientos cuarenta y ocho.

BERNARDO COUTO
MIG[l] ATRISTAIN
LUIS G. CUEVAS

[1] Except one in a deleted paragraph of Article 12, noticed hereafter.

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It is also stated in Article 5 of the treaty that there was signed and sealed by the Plenipotentiaries and added to the treaty a copy of a map of the United Mexican States (los Estados-Unidos de México) wherein were laid down the "southern and western limits of New Mexico, mentioned in this Article". Attached to the treaty copy by a ribbon running under the seals is the following certificate:

This is the Map referred to in the Fifth Article of the Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic, signed this day.

Witness our hands and seals, at Guadalupe Hidalgo, this second day of February one thousand eight hundred and forty-eight.

N. P. TRIST. [Seal]

Este es el mapa á que se refiere el artículo quinto del tratado de paz, amistad, límites y arreglo definitivo entre la República mejicana y los Estados Unidos de América, firmado en este dia. Y para que conste lo firmamos y sellamos en Guadalupe Hidalgo el dos de Febrero de mil ochocientos cuarenta y ocho.

BERNARDO COUTO [Seal]
MIGL ATRISTAIN [Seal]
LUIS G CUEVAS [Seal]

A facsimile reproduction of the Disturnell Map that was added to the United States original of the treaty will be found in a pocket inside the back cover of this volume. This reproduction, in the original size, is made by photolithography, matching the colors of the treaty map in its present state as closely as possible. The original tone of the paper itself, as changed by the lapse of time, but without color, is represented on the facsimile by a light buff overprint that covers the entire area of the treaty map, the limits of which may thus be seen outside the printed map margin; absence of this tint within the facsimile, in places where the paper remains white, is due to the loss of those portions of the treaty map, chiefly on account of earlier folding thereof. The treaty map, since the facsimile was made, has been remounted and crepelined (1936) and is now filed flat.

No express reference either to the Plan of the Port of San Diego or to the Disturnell Map is made in either instrument of ratification, in the act of exchange of ratifications, or in the proclamation.

THE THIRD ORIGINALS

It has been mentioned that there are originals of the treaty proper and of the additional and secret article, signed and sealed by the Plenipotentiaries, in the Trist Papers in the Library of Congress (29 : 61340–66); photostats thereof are in the treaty file; for convenience they are herein called "third" originals. The Trist papers include no example of the Disturnell Map or of the Plan of the Port of San Diego.

As in the first and second originals of each instrument, the text of the third originals is written in parallel columns, the English version at the left; and the text is wholly in the hand of Edward Thornton, then of the staff of the British Minister to Mexico and later Sir Edward Thornton, Minister at Washington from 1868 to 1881.

Aside from matters of capitalization, spelling, abbreviation, accents, etc., and an occasional singular for a plural, or vice versa, the vari-

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ances between the first original of the treaty proper as signed and the third original thereof are mostly in punctuation, chiefly commas omitted or inserted. There are some 35 variances of punctuation in the English version and 117 in the Spanish; but none of them appears to be at all material. No variances of wording have been noticed in the English version; those in the Spanish are listed in the following table, the second column of which gives the wording here printed [1] and the third column that of the third original:

Article or clause	First original	Third original
Preamble	nombrado á este efecto sus respectivos Plenipotenciarios	nombrado Plenipotenciarios
Art. 2	el General en Gefe	el Gefe
Art. 3, par. 1	y que no distarán	y no distarán
Art. 4, par. 4	brevedad posible despues	brevedad despues
Art. 5, par. 1	luego hácia occidente por todo	luego por todo
Art. 6, par. 2	de ambos paises	de los habitantes de los dos paises
Art. 7, par. 1	alguna de sus riberas	alguna de las riberas
Art. 8, par. 1	permanecer en donde	permanecer donde
Art. 9, par. 3	señalados por el presente Tratado á la República	señalados á la República
Art. 10, par. 1	territorios que pertenecieron	territorios que pertenecian
	señalados en aquellas	señalados á aquellas
	obligatorias para el Estado	obligatorias al estado
Art. 10, par. 2	nuevo plazo que	nuevo periodo que
Art. 12, par. 2	El capital de	El capital del
Art. 15, par. 2	documentos, así especificados, que	documentos que
Art. 21	juzgue absolutamente incompatible	juzgue incompatible
Art. 22, rule 1	comerciantes, artesanos, manufactureros	comerciantes, manufactureros
Art. 22, rule 2	prisioneros: tales	prisioneros: y tales
	y libremente transmitir	y podrá libremente transmitir

The text of the additional and secret article is printed later in these notes, collated with the first original. There are variances between the first and third originals of that article in matters of capitalization, punctuation, spelling, and accents; and there is one trifling difference of wording in the English version; the first original has "at" and the third "in" preceding "the city of Guadalupe Hidalgo" in the testimonium clause. Only one other difference is worthy of mention; the punctuation of the Spanish version in the third original gives a reading closer to the English than that of the first original, by having a comma instead of a semicolon after "veinte y tres", and thereafter a semicolon in lieu of a comma, following "mexicana".

[1] The comparison is between the two instruments as signed; so the context of the variances listed in Articles 9, 10, and 12 appears only in the text thereof printed in these editorial notes.

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The Senate Amendments

By the amendments of the Senate resolution of advice and consent of March 10, 1848 (Executive Journal, VII, 337–38, 340), the articles of the treaty proper as signed were proposed to be altered in various respects; the text so amended was that which went into force, as the Senate amendments were accepted by the Government of Mexico; it is that definitive text which follows the headnote.

In the opening lines of Article 3 there were inserted in the first parenthesis the words "and the ratifications exchanged" ("y cangeadas las ratificaciones") following "Mexican Republic" ("República mexicana"). The effect of the amendment was to make the exchange of ratifications (and not merely ratification by the two Governments) a condition precedent to the giving of orders for the raising of the blockade and the commencement of evacuation; in the event, both the ratification on the part of Mexico and the exchange took place on the same day, May 30, 1848.

For Article 9, the Senate amendment was a new text, adapted from Article 3 of the Treaty for the Cession of Louisiana (Document 28), which, indeed, was the basis of the first paragraph of the article as originally written; as signed, Article 9 read thus (collated with the first original):

Article IX.

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding Article, shall be incorporated into the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights of citizens of the United States. In the mean time, they shall be maintained and protected in the enjoyment of their liberty, their property, and the civil rights now vested in them according to the Mexican laws. With respect to political rights, their condition shall be on an equality with that of the inhabitants of the other territories of the United States; and at least equally good as that of the inhabitants of Louisiana and the Floridas, when these provinces, by transfer from the French Republic and the Crown of Spain, became territories of the United States.

The same most ample guaranty shall be enjoyed by all ecclesiastics and religious corporations or communities, as well in the discharge of the offices of their ministry, as in the enjoyment of their property of every kind, whether individual or corporate. This guaranty

Artículo IX.

Los mexicanos que en los territorios antedichos no conserven el carácter de ciudadanos de la República mexicana segun lo estipulado en el precedente artículo, serán incorporados en la Union de los Estados-Unidos y se admitirán lo mas pronto posible conforme á los principios de su constitucion federál al goze de la plenitud de derechos de ciudadanos de dichos Estados-Unidos. En el entretanto serán mantenidos y protegidos en el goze de su libertad, de su propiedad y de los derechos civiles que hoy tienen segun las leyes mexicanas. En lo respectivo á derechos políticos su condicion será igual á la de los habitantes de los otros territorios de los Estados-Unidos, y tan buena á lo menos, como la de los habitantes de la Luisiana y las Floridas, cuando estas Provincias por las cesiones que de ellas hicieron la República francesa y la Corona de España pasaron á ser territorios de la Union Norte-Americana.

Disfrutarán igualmente la mas amplia garantia todos los eclesiásticos, corporaciones y comunidades religiosas tanto en el desempeño de las funciones de su ministerio, como en el goze de su propiedad de todo género, bien pertenezca esta á las personas en particu-

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shall embrace all temples, houses and edifices dedicated to the Roman Catholic worship; as well as all property destined to it's support, or to that of schools, hospitals and other foundations for charitable or beneficent purposes. No property of this nature shall be considered as having become the property of the American Government, or as subject to be, by it, disposed of or diverted to other uses.

Finally, the relations and communication between the Catholics living in the territories aforesaid, and their respective ecclesiastical authorities, shall be open, free and exempt from all hindrance whatever, even although such authorities should reside within the limits of the Mexican Republic, as defined by this treaty; and this freedom shall continue, so long as a new demarcation of ecclesiastical districts shall not have been made, conformably with the laws of the Roman Catholic Church.

lar, bien á las corporaciones. La dicha garantia se extenderá á todos los templos, casas y edificios dedicados al culto católico-ro-romano, así como á los bienes destinados á su mantenimiento y al de las escuelas, hospitales y demás fundaciones de caridad y beneficencia. Ninguna propiedad de esta clase se considerará que ha pasado á ser propiedad del Gobierno Americano ó que puede este disponer de ella ó destinarla á otros usos.

Finalmente las relaciones y comunicacion de los católicos existentes en los predichos territorios, con sus respectivas autoridades eclesiásticas serán francas, libres y sin embarazo alguno, aun cuando las dichas autoridades tengan su residencia dentro de los límites que quedan señalados por el presente Tratado á la República mexicana, mientras no se haga una nueva demarcacion de distritos eclesiásticos, con arreglo á las leyes de la Iglesia católica-romana.

Article 10, as signed, was wholly stricken from the treaty, without substitution of new matter; it read as follows (collated with the first original):

ARTICLE X.

All grants of land made by the Mexican Government or by the competent authorities, in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, shall be respected as valid, to the same extent that the same grants would be valid, if the said territories had remained within the limits of Mexico. But the grantees of lands in Texas, put in possession thereof, who, by reason of the circumstances of the country since the beginning of the troubles between Texas and the Mexican Government, may have been prevented from fulfilling all the conditions of their grants, shall be under the obligation to fulfill the said conditions within the periods limited in the same respectively; such periods to be now counted from the date of the exchange of ratifications of this treaty: in default of which the said grants shall not be obligatory upon the State of Texas, in virtue of the stipulations contained in this Article.

ARTÍCULO X.

Todas las concesiones de tierra hechas por el Gobierno mexicano, ó por las autoridades competentes en territorios que pertenecieron antes á Mexico y quedan para lo futuro dentro de los límites de los Estados-Unidos, serán respetadas como válidas, con la misma extension con que lo serian si los indicados territorios permaneciéran dentro de los límites de México. Pero los concesionarios de tierras en Tejas, que hubieren tomado posesion de ellas, y que por razon de las circunstancias del pays desde que comenzaron las desavenencias entre el Gobierno mexicano y Tejas, hayan estado impedidos de llenar todas las condiciones de sus concesiones, tendrán la obligacion de cumplir las mismas condiciones, dentro de los plazos señalados en aquellas respectivamente, pero contados ahora desde la fecha del cange de las ratificaciones de este Tratado; por falta de lo qual las mismas concesiones no serán obligatorias para el Estado de Tejas en virtud de las estipulaciones contenidas en este artículo.

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The foregoing stipulation in regard to grantees of land in Texas, is extended to all grantees of land in the territories aforesaid, elsewhere than in Texas, put in possession under such grants; and, in default of the fulfilment of the conditions of any such grant, within the new period, which, as is above stipulated, begins with the day of the exchange of ratifications of this treaty, the same shall be null and void.

The Mexican Government declares that no grant whatever of lands in Texas has been made since the second day of March one thousand eight hundred and thirty six; and that no grant whatever of lands in any of the territories aforesaid has been made since the thirteenth day of May one thousand eight hundred and forty-six.

La anterior estipulacion respecto de los concesionarios de tierras en Tejas, se extiende á todos los concesionarios de tierras en los indicados territorios fuera de Tejas, que hubieren tomado posesion de dichas concesiones: y por falta de cumplimiento de las condiciones de alguna de aquellas dentro del nuevo plazo que empieza á correr el dia del cange de las ratificaciones del presente Tratado, segun lo estipulado arriba, serán las mismas concesiones nulas y de ningun valor.

El Gobierno mexicano declara que no se ha hecho ninguna concesion de tierras en Tejas desde el dia dos de Marzo de mil ochocientos treinta y seis; y que tampoco se ha hecho ninguna en los otros territorios mencionados despues del trece de Mayo de mil ochocientos cuarenta y seis.

From the second paragraph of Article 11, these concluding words (which followed a semicolon) were stricken: "nor to provide such Indians with fire-arms or ammunition by sale or otherwise" (in the Spanish version, "ni en fin venderles ó ministrarles bajo cualquier título armas de fuego ó municiones").

The deletions from Article 12 by the Senate amendments will be seen from the following text, which is that of the article as signed, with the stricken clauses in italics and bracketed (collated with the first original):

ARTICLE XII.

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth Article of the present Treaty, the Government of the United States engages to pay to that of the Mexican Republic the sum of fifteen Millions of Dollars[, *in the one or the other of the two modes below specified. The Mexican Government shall, at the time of ratifying this treaty, declare which of these two modes of payment it prefers; and the mode so elected by it shall be conformed to by that of the United States*].

[*First mode of payment: Immediately after this treaty shall have been duly ratified by the Government of the Mexican Republic, the sum of three Millions of Dollars shall be paid to the said Government by that of the United States at the city of Mexico, in the gold or silver coin of Mexico. For the remaining twelve millions of dollars, the United States shall create a stock, bearing an interest*

ARTÍCULO XII.

En consideracion á la estension que adquieren los límites de los Estados-Unidos, segun quedan descritos en el artículo quinto del presente Tratado, el Gobierno de los mismos Estados-Unidos se compromete á pagar al de la Republica mexicana la suma de quince millones de pesos[, *de una de las dos maneras que van á explicarse: El Gobierno mexicano al tiempo de ratificar este Tratado declarará cual de las dos maneras de pago prefiere; y á la que así elija, se arreglará el Gobierno de los Estados-Unidos al verificar el pago*].

[*Primera manera de pago.—Inmediatamente despues que este Tratado haya sido ratificado por el Gobierno de la Republica mexicana, se entregará al mismo Gobierno por el de los Estados-Unidos en la ciudad de Mexico, y en moneda de plata ú oro del cuño mexicano, la suma de tres millones de pesos. Por los doce millones de pesos restantes los Estados Unidos crearán un fondo*

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of six per centum per annum, commencing on the day of the ratification of this Treaty by the Government of the Mexican Republic, and payable annually at the city of Washington: the principal of said stock to be redeemable there, at the pleasure of the Government of the United States, at any time after two years from the exchange of ratifications of this treaty; six months public notice of the intention to redeem the same being previously given. Certificates of such stock, in proper form. for such sums as shall be specified by the Mexican Government, and transferable by the said Government, shall be delivered to the same by that of the United States.

Second mode of payment:] Immediately after this treaty shall have been duly ratified by the Government of the Mexican Republic, the sum of three millions of dollars shall be paid to the said Government by that of the United States at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place and in the same coin, in annual instalments of three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions, from the day of the ratification of the present treaty by the Mexican Government, and the first of the instalments shall be paid at the expiration of one year from the same day. Together with each annual instalment, as it falls due, the whole interest accruing on such instalment from the beginning shall also be paid. [*Certificates in proper form, for the said instalments respectively, in such sums as shall be desired by the Mexican Government, and transferable by it, shall be delivered to the said Government by that of the United States.*]

público que gozará redito de seis por ciento al año, el cual rédito ha de comenzar á correr el dia que se ratifique el presente Tratado por el Gobierno de la Republica mexicana, y se pagará anualmente en la ciudad de Washington. El capital de[1] *dicho fondo público será redimible en la misma ciudad de Washington en cualquiera época que lo disponga el Gobierno de los Estados-Unidos, con tal que hayan pasado dos años contados desde el cange de las ratificaciones del presente Tratado, y dándose aviso al público con anticipacion de seis meses. Al Gobierno mexicano se entregarán por el de los Estados-Unidos los Bonos correspondientes á dicho fondo, extendidos en debida forma, divididos en las cantidades que señale el expresado Gobierno mexicano, y enagenables por este.*

Segunda manera de pago—]Inmediatamente despues que este Tratado haya sido ratificado por el Gobierno de la República mexicana, se entregará al mismo Gobierno por el de los Estados-Unidos, en la ciudad de Mexico, y en moneda de plata ú oro del cuño mexicano, la suma de tres millones de pesos. Los doce millones de pesos restantes se pagarán en México, en moneda de plata ú oro del cuño mexicano, en abonos de tres millones de pesos cada año, con un rédito de seis por ciento anual: este rédito comienza á correr para toda la suma de los doce millones el dia de la ratificacion del presente Tratado por el Gobierno mexicano, y con cada abono anual de capital se pagará el rédito que corresponda á la suma abonada. Los plazos para los abonos de capital corren desde el mismo dia que empiezan á causarse los réditos. [*El Gobierno de los Estados-Unidos entregará al de la República mexicana pagarés extendidos en debida forma, correspondientes á cada abono anual, divididos en las cantidades que senale el dicho Gobierno mexicano, y enagenables por este.*]

The Senate amendment to Article 23, which provided for the exchange of ratifications "in the city of Washington", inserted after the quoted words "or at the seat of government of Mexico" (in the Spanish, "ó donde estuviere el gobierno Mexicano").

The Senate resolution of advice and consent made no specific reference to the Spanish version of the treaty; but in respect of the

[1] The second original has "del".

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amended articles no textual question of importance arises; no Spanish version of the amended text appears in any of the formal instruments except the Mexican ratification; with that instrument the Spanish version of the text here printed following the headnote has, to the limited extent necessary, been collated; in respect of two articles (11 and 12) the Senate amendments were partial deletions, requiring merely the omission of equivalent words of the Spanish; Article 10 was wholly stricken; the new matter inserted in two articles (3 and 23) was but a few words; for Article 9 a new text was written in English in the Senate resolution and in Spanish in the Mexican ratification; for the English of Article 9 the source is the attested Senate resolution in the treaty file. It might almost equally well be the duplicate United States instrument of ratification, for in this regard the two are precisely the same except that the latter has brackets in lieu of parentheses.

The Additional and Secret Article

The additional and secret article of the Treaty of Guadalupe Hidalgo is one of few instances of a secret article of a treaty signed on behalf of the United States (see Documents 7 and 69). The additional and secret article was stricken out pursuant to the resolution of the Senate, was not ratified on either part, and did not go into force; it provided for a more extended term for the exchange of ratifications than that written in Article 23 of the treaty proper (eight months instead of four); less than four months elapsed between signature and exchange (February 2 and May 30, 1848); this became possible because of the amendment to Article 23, which permitted the exchange to take place "at the seat of government of Mexico".

The text of the additional and secret article is as follows, collated with the first of the two originals in the treaty file; it is to be said that there are no variances between those two papers except in matters of capitalization, accents, and one quite immaterial comma in the English version:

Additional and Secret Article

Of the Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic, signed this day by their respective Plenipotentiaries.

In view of the possibility that the exchange of the ratifications of this treaty may, by the circumstances in which the Mexican Republic is placed, be delayed longer than the term of four months fixed by it's twenty-third Article for the exchange of ratifications of the same; it is hereby agreed that such delay shall not, in any manner, affect the force and validity of this Treaty, unless it should exceed the term of eight months, counted from the date of the signature thereof.

Artículo adicional y secreto

Del Tratado de Paz, Amistad, Límites y arreglo definitivo entre la Republica mexicana y los Estados-Unidos de América firmado hoy por sus respectivos Plenipotenciarios.

En atencion á la posibilidad de que el cange de las ratificaciones de este Tratado se demore mas del término de cuatro meses fijados en su artículo veinte y tres; por las circunstancias en que se encuentra la Republica mexicana, queda convenido que tal demora no afectará de ningun modo la fuerza y validez del mismo Tratado, si no excediére de ocho meses contados desde la fecha de su firma.

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This Article is to have the same force and virtue as if inserted in the treaty to which it is an Addition.

In faith whereof, we, the respective Plenipotentiaries have signed this Additional and Secret Article, and have hereunto affixed our seals respectively. Done in Quintuplicate at the City of Guadalupe Hidalgo on the second day of February, in the year of Our Lord one thousand eight hundred and forty-eight.

N. P. Trist.	[Seal]
Luis G. Cuevas	[Seal]
Bernardo Couto	[Seal]
Migl Atristain	[Seal]

Este artículo tendrá la misma fuerza y valor que si estuviese inserto en el Tratado de que es parte adicional.

En fé de lo cual, nosotros los respectivos Plenipotenciarios hemos firmado y sellado este artículo adicional y secreto. Hecho por quintuplicado en la Ciudad de Guadalupe Hidalgo el dia dos de Febrero del año de Nuestro Señor mil ochocientos cuarenta y ocho.

Bernardo Couto	[Seal]
Migl Atristain	[Seal]
Luis G. Cuevas	[Seal]
N. P. Trist.	[Seal]

The Senate Proceedings

The first original of the Treaty of Guadalupe Hidalgo reached Washington during the evening of Saturday, February 19, 1848, seventeen days after its signature. In the entry for that date in the Diary of James K. Polk (hereinafter cited as "Polk's Diary") is this statement (III, 345):

> After night a messenger arrived from Mexico bearing despatches from the army, and a Treaty of peace entered into on the 2nd Inst. by Mr. Trist with mexican plenipotentiaries appointed for that purpose. This messenger was Mr. Freanor,[1] who has been with the army for some time in the capacity of a correspondent of the New Orleans *Delta*, over the signature of Mustang. About 9 O'Clock Mr. Buchanan called with the Treaty. He read it. Mr. Trist was recalled in October last, but chose to remain in Mexico and continue the negotiation. The terms of the Treaty are within his instructions which he took out in April last, upon the important question of boundary and limits. There are many provisions in it which will require more careful examination than a single reading will afford. Mr. Trist has acted very badly, as I have heretofore noted in this diary, but notwithstanding this, if on further examination the Treaty is one that can be accepted, it should not be rejected on account of his bad conduct. Mr. Buchanan left the Treaty with me.

The treaty had been signed without authority on the part of the Plenipotentiary of the United States; some months before the date of the treaty all instructions to Nicholas P. Trist to act on behalf of the United States had been revoked and he had been recalled.

The question presented to the President and his advisers was whether the treaty should be sent to the Senate; and, while it was later argued in the Senate that the instrument was "utterly void and ineffectual" (see the elaborate resolution of Senator Houston in Executive Journal, VII, 304–5), there can be no doubt that the President had the power to adopt and confirm the unauthorized acts and signature of Trist, insofar as he wished to do so. Indeed, even regarding the signature of Trist as an utter nullity, the treaty was, at the very least, a proposal from the Mexican Government; the President was clearly entitled to send the treaty to the Senate; the question before him was wholly one of discretion and not at all one of power.

[1] James L. Freaner.

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There was lengthy discussion of the subject in Cabinet (Polk's Diary, III, 345–51, *passim*); the presidential decision was definite by February 21, these reasons being given (*ibid.*, 347–48):

I made known my decision upon the Mexican Treaty, which was that under all the circumstances of the case, I would submit it [to] the Senate for ratification, with a recommendation to strike out the 10th article. I assigned my reasons for my decision. They were, briefly, that the treaty conformed on the main question of limits & boundary to the instructions given to Mr. Trist in April last; and that though, if the treaty was now to be made, I should demand more territory, perhaps to make the Sierra Madra the line, yet it was doubtful whether this could be ever obtained by the consent of Mexico. I looked, too, to the consequences of its rejection. A majority of one branch[1] of Congress is opposed to my administration; they have falsely charged that the war was brought on and is continued by me with a view to the conquest of Mexico; and if I were now to reject a Treaty made upon my own terms, as authorized in April last, with the unanimous approbation of the Cabinet, the probability is that Congress would not grant either men or money to prosecute the war. Should this be the result, the army now in Mexico would be constantly wasting and diminishing in numbers, and I might at last be compelled to withdraw them, and thus loose the two Provinces of New Mexico & Upper California, which were ceded to the U.S. by this Treaty. Should the opponents of my administration succeed in carrying the next Presidential election, the great probability is that the country would loose all the advantages secured by this Treaty. I adverted to the immense value of Upper California; and concluded by saying that if I were now to reject my own terms, as offered in April last, I did not see how it was possible for my administration to be sustained.

The message submitting the treaty to the Senate was dated February 22, 1848, and was then sent to the Senate; but that body had adjourned at an early hour because of the "extreme illness" of ex-President John Quincy Adams (*ibid.*, 351); the message was read in the Senate on February 23, as follows (Executive Journal, VII, 302–3):

I lay before the Senate, for their consideration and advice as to its ratification, a treaty of peace, friendship, limits and settlement, signed at the city of Guadalupe Hidalgo, on the second day of February, 1848, by N. P. Trist, on the part of the United States, and by plenipotentiaries appointed for that purpose on the part of the Mexican Government.

I deem it to be my duty to state that the recall of Mr. Trist as Commissioner of the United States, of which Congress was informed in my annual message, was dictated by a belief that his continued presence with the Army could be productive of no good, but might do much harm by encouraging the delusive hopes and false impressions of the Mexicans; and that his recall would satisfy Mexico that the United States has no terms of peace more favorable to offer. Directions were given that any propositions for peace which Mexico might make should be received and transmitted by the commanding general of our forces to the United States.

It was not expected that Mr. Trist would remain in Mexico, or continue in the exercise of the functions of the office of Commissioner after he received his letter of recall. He has, however, done so, and the plenipotentiaries of the Government of Mexico, with a knowledge of the fact, have concluded with him this treaty. I have examined it with a full sense of the extraneous circumstances attending its conclusion and signature, which might be objected to, but conforming, as it does, substantially, on the main questions of boundary and indemnity, to the terms which our Commissioner; when he left the United States in April last, was authorized to offer; and animated, as I am, by the spirit which

[1] The House of Representatives.

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has governed all my official conduct towards Mexico, I have felt it to be my duty to submit it to the Senate for their consideration, with a view to its ratification.

To the tenth article of the treaty there are serious objections, and no instructions given to Mr. Trist contemplated or authorized its insertion. The public lands within the limits of Texas belong to that State, and this Government has no power to dispose of them or to change the conditions of grants already made. All valid titles to land within the other territories ceded to the United States will remain, unaffected by the change of sovereignty; and I therefore submit that this article should not be ratified as a part of the treaty.

There may be reason to apprehend that the ratification of the "additional and secret article" might unreasonably delay and embarrass the final action on the treaty by Mexico. I therefore submit whether that article should not be rejected by the Senate.

If the treaty shall be ratified as proposed to be amended, the cessions of territory made by it to the United States as indemnity, the provision for the satisfaction of the claims of our injured citizens, and the permanent establishment of the boundary of one of the States of the Union are objects gained of great national importance, while the magnanimous forbearance exhibited towards Mexico, it is hoped, may insure a lasting peace and good neighborhood between the two countries.

I communicate herewith a copy of the instructions given to Mr. Slidell in November, 1845, as envoy extraordinary and minister plenipotentiary to Mexico; a copy of the instructions given to Mr. Trist in April last, and such of the correspondence of the latter with the Department of State, not hitherto communicated to Congress, as will enable the Senate to understand the action which has been had with a view to the adjustment of our difficulties with Mexico.

John Quincy Adams died "in the Speaker's Room in the Capitol a few minutes past 7 O'Clock this evening" (Polk's Diary, III, 356, February 23, 1848); there was no executive session of the Senate until the following Monday, February 28; the treaty was then reported by the Committee on Foreign Relations "without amendment" (Executive Journal, VII, 304); that committee (of five) had first resolved, by the votes of all its members [1] except the chairman, to recommend the rejection of the treaty and the appointment of "three or five persons belonging to both political parties" to conduct new negotiations (Polk's Diary, III, 364); this course was vigorously and successfully opposed by Polk, who commented on it in these scathing terms (*ibid.*, 364–66, February 28, 1848):

Mr. Sevier said they did not object to the terms of the Treaty, with the modifications I had recommended in its ratification, but to Mr. Trist's authority to make it after his recall as commissioner. Mr. Sevier informed me that he had waited on me, with the knowledge of the committee, to inform me of what had been done, and to ascertain my views on the subject with a view to communicate them to the committee and to the Senate. He informed me also that both Mr. Webster and Mr. Benton had requested him to say to me that it would be well for me to be casting about for the commissioners, that the commission should be composed of distinguished men of both political parties, who should be appointed immediately after the action of the Senate should take place, and proceed forthwith to Mexico. I remarked to Mr. Sevier that the course proposed was an extraordinary proceeding, and one which I could not approve. I told him that if

[1] The committee was composed of three Democrats, Ambrose H. Sevier, of Arkansas, Chairman; Thomas H. Benton, of Missouri; and Edward A. Hannegan, of Indiana; and two Whigs, Willie P. Mangum, of North Carolina; and Daniel Webster, of Massachusetts. In the final vote in the Senate, three of the five favored the treaty, with Benton and Webster opposed.

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he deemed it necessary to say anything, as coming from me, to the committee or to the Senate, it would be that upon full deliberation I had submitted the Treaty to the Senate with my recommendation that with certain modifications it should be ratified, and that I had not changed my opinion; but that, if the Senate chose to recommend a different course, I would co-operate with them as far as in my judgment the public interests would permit. I told him I condemned the insubordinate & insolent conduct of Mr. Trist, but that the Treaty itself was the subject for consideration and not his conduct, and that if the provisions of the Treaty were such as could be accepted, it would be worse than an idle ceremony to send out a grand commission to re-negotiate the same Treaty. I told him, also, that if the Senate advised me to send out such a commission, I hoped they would advise me also what terms they would accept. I consider the course of the committee of the Senate weak, if not factious, and cannot doubt that the object of Mr. Webster is to defeat any Treaty, clamorous as the Whig party profess to be for peace, until after the next Presidential election. Indeed, Mr. Sevier informed me that Mr. Webster said he wanted *no* territory beyond the Rio Grande, and that he said also that if he voted for this Treaty and Mexico should not ratify it, he would be bound to vote for men and money to carry on the War, a position which he did not wish to occupy. I do not wonder at his course, but I am suprised at that of Mr. Hannegan and Mr. Benton. Extremes sometimes meet and act effectively for negative purposes, but never for affirmative purposes. They have done so in this instance. Mr. Webster is for *no* territory and Mr. Hannegan is for *all* Mexico, and for opposite reasons both will oppose the Treaty. It is difficult, upon any rational principle, to assign a satisfactory reason for anything Col. Benton may do, especially in his present temper of mind, wholly engrossed as he seems to have been for some months past with the case of his son-in-law, Col. Fremont. The truth is the approaching Presidential election absorbs every other consideration, and Senators act as if there was no country and no public interests to take care of. The factions are all at work, and votes are controlled, even upon a vital question of peace or war, by the supposed effect upon the public mind. If the Treaty in its present form is ratified, there will be added to the U.S. an immense empire, the value of which 20 years hence it would be difficult to calculate, & yet Democratic and Whig Senators disregard this, and act solely with the view to the elevation of themselves or their favourites to the Presidential office.

In a message of February 29, responding to a request of the Senate for papers, Polk made this further statement of his reasons for submitting the treaty and of his position in favor of its ratification with the amendments suggested (Executive Journal, VII, 306–7):

In compliance with the resolution of the Senate passed in "executive session" on yesterday, requesting the President "to communicate to the Senate, *in confidence*, the entire correspondence between Mr. Trist and the Mexican commissioners, from the time of his arrival in Mexico until the time of the negotiation of the treaty submitted to the Senate; and also the entire correspondence between Mr. Trist and the Secretary of State in relation to his negotiations with the Mexican commissioners; also all the correspondence between General Scott and the Government and between General Scott and Mr. Trist since the arrival of Mr. Trist in Mexico, which may be in the possession of the Government," I transmit herewith the correspondence called for. These documents are very voluminous, and presuming that the Senate desired them in reference to early action on the treaty with Mexico submitted to the consideration of that body by my message of the 22d instant, the originals of several of the letters of Mr. Trist are herewith communicated, in order to save the time which would necessarily be required to make copies of them. These original letters it is requested may be returned when the Senate shall have no farther use for them.

The letters of Mr. Trist to the Secretary of State, and especially such of them as bear date subsequent to the receipt by him of his letter of recall as commissioner, it will be perceived, contain much matter that is impertinent irrelevant, and highly exceptionable. Four of these letters, bearing date respectively the

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29th December, 1847, January 12th, January 22d, and January 25th, 1848, have been received since the treaty was submitted to the Senate. In the latter it is stated that the Mexican commissioners who signed the treaty derived "their full powers, bearing date on the 30th December, 1847, from the President *ad interim* of the Republic (General Anaya), constitutionally elected to that office in November by the Sovereign Constituent Congress" of Mexico. It is impossible that I can approve the conduct of Mr. Trist in disobeying the positive orders of his Government contained in the letter recalling him, or do otherwise than condemn much of the matter with which he has chosen to incumber his voluminous correspondence. Though all of his acts since his recall might have been disavowed by his Government, yet Mexico can take no such exception. The treaty which the Mexican commissioners have negotiated with him, with a full knowledge on their part that he had been recalled from his mission, *is* binding on Mexico.

Looking at the actual condition of Mexico, and believing that if the present treaty be rejected the war will probably be continued, at great expense [of] life and treasure, for an indefinite period, and considering that the terms, with the exceptions mentioned in my message of the 22d instant, conform substantially, so far as relates to the main question of boundary, to those authorized by me in April last, I considered it to be my solemn duty to the country, uninfluenced by the exceptionable conduct of Mr. Trist, to submit the treaty to the Senate with a recommendation that it be ratified, with the modifications suggested.

Nothing contained in the letters received from Mr. Trist since it was submitted to the Senate has changed my opinion on the subject.

The resolution also calls for "all the correspondence between General Scott and the Government since the arrival of Mr. Trist in Mexico." A portion of that correspondence, relating to Mr. Trist and his mission, accompanies this communication. The remainder of the "correspondence between General Scott and the Government," relates mainly, if not exclusively, to military operations. A part of it was communicated to Congress with my annual message, and the whole of it will be sent to the Senate if it shall be desired by that body. As coming within the purview of the resolution, I also communicate copies of the letters of the Secretary of War to Major-General Butler in reference to Mr. Trist's remaining at the headquarters of the Army in the assumed exercise of his powers of commissioner.

The authenticated Disturnell Map and the authenticated Plan of the Port of San Diego mentioned in Article 5 of the treaty, with the covering despatch of Trist of February 12, 1848, which had been received at the Department of State on March 6, were transmitted to the Senate on March 7 (*ibid.*, 328); but one hundred copies of the Disturnell Map had been ordered purchased for the use of the Senate on February 28 (*ibid.*, 306).

Debate in the Senate went on daily (except on Sunday, March 5) from February 28 to March 10, when the final vote was had. There was some hostility to the treaty on account of Trist's lack of authority; but Webster's motion for further negotiations was laid on the table without division (Executive Journal, VII, 311); slavery "in the territories hereby ceded" was the subject of one proposal (*ibid.*, 330); another would have required the assent "of the people and governments" of California and New Mexico (*ibid.*, 336); on the major question of the boundary there were, as observed by Polk in his diary for February 28 (quoted above), Senators who favored a larger cession and others who urged one of more limited extent; the extreme proposal of Houston (not pressed to a vote) would have required a cession of Lower California and have drawn the line thence eastward from 25° north latitude to the Gulf of Mexico so as to

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include in the United States San Luis Potosí and Tampico (*ibid.*, 304–5); the amendment offered by Jefferson Davis, of Mississippi, would have changed the boundary so as to acquire from Mexico most of the States of Tamaulipas and Nuevo León, all of Coahuila, and a large portion of Chihuahua; this was rejected by 44 votes to 11 (*ibid.*, 322–23; the lines proposed by Houston and Davis are shown in Paullin, Atlas of the Historical Geography of the United States, plate 94A; and see the text in that work, pp. 65–66); the views of those who opposed the territorial acquisition as too large were put forward in the motion of John J. Crittenden, of Kentucky, to recommit with instructions to draft "a cession which should have for its principal objects a satisfactory establishment of the boundary of Texas and the acquisition of the bay and harbor of San Francisco", which was defeated by 30 votes to 18 (Executive Journal, VII, 326–28); the motion of George E. Badger, of North Carolina, to strike out the boundary description in Article 5 (defeated by 35 votes to 15; *ibid.*, 329), had substantially the same object as that of Crittenden (see Rives, The United States and Mexico, II, 635).

In the presidential message of submission it had been recommended that Article 10 and the additional and secret article be rejected; the final Senate votes to the same effect were unanimous (Executive Journal, VII, 332, 333); the wording, though not the principle, of Article 9 as signed was deemed by a decided majority of the Senate to be objectionable, and there was difficulty in the redrafting; but the final proposal, adapted from Article 3 of the Treaty for the Cession of Louisiana (Document 28), was accepted by 44 yeas to 5 nays (*ibid.*, 323, 324–26, 330–32); the amendments to Articles 3 and 23 were hardly contentious (*ibid.*, 326, 333, 334); the striking out of the concluding words of the second paragraph of Article 11, regarding the sale of arms and ammunition to the Indians, was a minor point on which a majority of the Senate voted both pro and con at different times (*ibid.*, 314, 332–33).

More important were the deletions from Article 12. By that article as signed, the Mexican Government had the right to choose one or the other of two methods for the payment by the United States of $12,000,000. The first method was the issuance of Government stock payable at Washington at the pleasure of the United States after two years and bearing 6 percent interest. The second method was by annual instalments of $3,000,000 each, payable in coin at Mexico City with like interest, the instalments to be evidenced by transferable certificates. One amendment of the Senate struck out the first method of payment prescribed. Another struck out from the second method of payment the provision for transferable certificates. The effect of the two amendments, taken together, was to leave simply a treaty obligation for the four annual instalments of $3,000,000 each, running from Government to Government and without negotiable or transferable instruments of the debt. It was in respect of the amendments to Article 12 that a minority of the Senate had their way, owing to the rules of voting then prevailing.

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By those rules, which had been adopted on January 6, 1801 (Executive Journal, I, 365), and which were not changed in this regard until 1868 (Senate Report No. 56, 40th Congress, 2d session, serial 1320, rule 38; see Congressional Globe, XXXIX, pt. 3, 2094, March 25, 1868), a motion to amend a treaty by striking out a portion thereof was put in the reverse form, as, for example, "Shall these words stand as part of the treaty, to wit?" That motion required a two-thirds majority for adoption or, in other words, for retaining in the treaty the words proposed to be stricken. Consequently, a minority of the Senate, if more than one third of those voting, could under those rules include in the text of the resolution of advice and consent finally to be voted on, provisions for the striking out of such portions of a treaty as the minority saw fit.

In the case here considered of the amendments to Article 12 of the treaty, the vote on the motion to strike out the first method of payment showed 28 in favor of retaining the provision and 22 opposed; accordingly, it was deleted (Executive Journal, VII, 335–36); the vote in favor of retaining the certificate provision in the second method of payment was 34, with 19 opposed, and later, on reconsideration, 30, with 18 opposed (*ibid.*, 335, 337); so the certificate clause was also deleted; each of those motions to strike was by Jefferson Davis, of Mississippi; and a motion by Reverdy Johnson, of Maryland, to add to Article 12 a certificate clause for the first two instalments was negatived, although favored by 33 Senators with 18 opposed (*ibid.*, 338–39).

The fate of the treaty had been at first thought to be doubtful (Polk's Diary, III, 367–69, February 29–March 1, 1848); but the resolution of advice and consent (including the amendments made) was adopted by more than the requisite two-thirds majority; the vote was 38 yeas to 14 nays, with four Senators[1] not recorded (Executive Journal, VII, 340; for an analysis of the vote by parties and States, see Rives, *op. cit.*, II, 636–37).

The papers communicated, some with the treaty and a much larger number subsequently at the request of the Senate, were voluminous; they included all the instructions given to Trist (except one of December 21, 1847) and most of his correspondence not only with the Secretary of State but also with the Mexican Commissioners and with General Scott, as well as other material; and with the exception of certain portions of the despatches of Trist, which were marked for omission by the Committee on Foreign Relations, they were printed at the time (see Executive Journal, VII, 303, 307, 308, 311, 313, 328, 334; also Senate Confidential Documents Nos. 7, 8, and 9, 30th Congress, 1st session, Regular Confidential Documents, XXIII, 183–494, and the Senate document cited in the following paragraph).

Following an unauthorized publication of the treaty and the amendments, contempt proceedings against John Nugent, a newspaper correspondent, his commitment to the custody of the Sergeant at

[1] John M. Clayton, of Delaware; Samuel Houston, of Texas; James A. Pearce, of Maryland; and Samuel S. Phelps, of Vermont.

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Arms of the Senate, and his discharge (see Executive Journal, VII, 353–404, *passim*), the injunction of secrecy was removed from the messages, documents, proceedings, debates, and papers, and they were printed as a public document (*ibid.*, 422, 423, May 31 and June 2, 1848), but with the same omissions from the despatches of Trist as when previously printed in confidence; that public print is Senate Executive Document No. 52, 30th Congress, 1st session, serial 509 (that document is hereinafter generally cited as "serial 509"; certain of the papers cited therefrom are also printed in House Executive Document No. 60 of the same session, serial 520).

Publication of the Treaty

In the New York Herald of Saturday, February 26, 1848, appeared a Washington letter of February 24 giving a generally accurate summary of the chief provisions of the treaty proper; in the issue of the same newspaper of March 13 was printed the English version of the treaty and additional article as signed (omitting the words deleted from Article 11 pursuant to the Senate resolution); the treaty was stated to have been withheld from publication for nearly two weeks, "from a regard to the public interests"; the print included a summary of the amended Article 9 and stated the effect of the other Senate amendments except that to Article 3; and the vote in the Senate was listed in detail.

At Mexico City the Washington letter of February 24 was quoted on March 15 in the Daily American Star, which gave the news of the Senate amendments on April 7. Other summaries of the provisions of the treaty were printed in that paper on April 3 and in El monitor republicano on April 9. The newspaper last mentioned printed on April 10 a Spanish translation of the English version of the treaty and additional article, together with the Senate amendments. This was followed on April 12 and 13 by a similar publication in the Daily American Star.

Explanation of the Amendments

In connection with the proceedings had in the Senate and the amendments to the treaty which were voted, is to be read the following note of Buchanan to the Minister of Foreign Relations of the Mexican Republic dated March 18, 1848, which was delivered prior to the consideration of the treaty by the Mexican Congress (D.S., 2 Communications to Foreign Sovereigns and States, 51–62):

To His Excellency, the Minister of Foreign Relations of the Mexican Republic.

Sir: Two years have nearly passed away since our Republics have been engaged in war. Causes which it would now be vain if not hurtful to recapitulate, have produced this calamity. Under the blessing of a kind Providence, this war, I trust, is about to terminate, and, hereafter, instead of the two nations doing each other all the harm they can, their mutual energies will be devoted to promote each other's welfare by the pursuits of peace and of commerce. I most cordially congratulate you on the cheering prospect. This will become a reality as soon as the Mexican Government shall approve the treaty of peace between the two

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nations concluded at Guadalupe Hidalgo on the 2nd February, last, with the amendments thereto which have been adopted by the Senate of the United States.

The President, in the exercise of his constitutional discretion, a few days after this treaty was received, submitted it to the Senate for their consideration and advice as to its ratification. Your Excellency is doubtless aware that under the Constitution of the United States, "the advice and consent of the Senate" is necessary to the validity of all treaties and that this must be given by a majority of two thirds of the Senators present. Every Treaty must receive the sanction of this august Executive Council in the manner prescribed by the Constitution, before it can be binding on the United States.

The Senate commenced their deliberations on this Treaty on the 23d February, last, and continued to discuss its provisions until the 10th instant (March) when they finally advised and consented to its ratification by a majority of 38 to 14. Your Excellency will perceive that a change of 4 votes taken from the majority and added to the minority would have defeated the Treaty.

I have now the honor to transmit you a printed copy of the Treaty with a copy, in manuscript, of the amendments and final proceedings of the Senate upon it. This is done to hasten with as little delay as practicable the blessed consummation of peace by placing in the possession of the Mexican Government at as early a period as possible all the information which they may require to guide their deliberations.

In recurring to the amendments adopted by the Senate, it affords me sincere satisfaction to observe that none of the leading features of the Treaty have been changed. Neither the delineation of the boundaries between the two Republics,—nor the consideration to be paid to Mexico for the extension of the boundaries of the United States,—nor the obligation of the latter to restrain the Indians within their limits from committing hostilities on the territories of Mexico nor, indeed, any other stipulation of national importance to either of the parties, has been stricken out from the Treaty by the Senate. In all its important features, it remains substantially as it was when it came from the hands of the negotiators.

The first amendment adopted by the Senate is to insert in Article 3 after the words "Mexican Republic" where they first occur, the words, *"and the Ratifications exchanged"*.

Under this article, as it originally stood, the blockades were to cease and the troops of the United States were to commence the evacuation of the Mexican territory immediately upon the ratification of the Treaty by both Governments. The amendment requires in addition that these ratifications shall have been first exchanged

The object of this amendment doubtless was to provide against the possibility that the American Senate and the Mexican Congress might ratify the Treaty, the first in its amended and the latter in its original form: in which event peace would not thereby be concluded. Besides, it was known that this amendment could produce no delay, as under the amendment of the Senate to the 23d article, the ratifications of the Treaty may be exchanged at the seat of Government of Mexico the moment after the Mexican Government and Congress shall have accepted the Treaty as amended by the Senate of the United States.

The second amendment of the Senate is to strike out the 9th Article and insert the following in lieu thereof.

[Here follows the English version of Article 9]

This article is substantially the same with the original 9th article; but it avoids unnecessary prolixity and accords with the former safe precedents of this Government in the Treaties by which we acquired Louisiana from France and Florida from Spain.

The Louisiana Treaty of the 30th April, 1803 [Document 28], contains the following article.

ARTICLE 3.

"The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights,

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advantages and immunities of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

Again, in the Florida Treaty of 22nd February, 1819 [Document 41], the following articles are contained.

ARTICLE 5.

"*The inhabitants of the ceded Territories shall be secured in the free exercise of their religion, without any restriction;* and all those who may desire to remove to the Spanish Dominions, shall be permitted to sell or export their effects, at any time whatever, without being subject, in either case, to duties."

ARTICLE 6.

"The inhabitants of the territories which His Catholic Majesty cedes to the United States, by this Treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights and immunities of the citizens of the United States."

Under these Treaties with France and Spain, the free and flourishing States of Louisiana, Missouri, Arkansas, Iowa and Florida have been admitted into the Union; and no complaint has ever been made by the original or other inhabitants that their civil or religious rights have not been amply protected. The property belonging to the different churches in the United States is held as sacred by our Constitution and laws as the property of individuals; and every individual enjoys the inalienable right of worshipping his God according to the dictates of his own conscience. The Catholic Church in this country would not, if they could, change their position in this particular.

After the successful experience of nearly half a century, the Senate did not deem it advisable to adopt any new form for the 9th Article of the Treaty; and surely the Mexican Government ought to be content with an article similar to those which have proved satisfactory to the Governments of France and Spain and to all the inhabitants of Louisiana and Florida, both of which were Catholic provinces.

I ought perhaps here to note a modification in the 9th article, as adopted by the Senate, of the analogous articles of the Louisiana and Florida Treaties. Under this modification, the inhabitants of the ceded territories are to be admitted into the Union, "at the proper time (to be judged of by the Congress of the United States") &c.

Congress, under all circumstances and under all Treaties are the sole judges of this proper time, because they and they alone, under the Federal Constitution, have power to admit new States into the Union. That they will always exercise this power as soon as the condition of the inhabitants of any acquired territory may render it proper, cannot be doubted. By this means the Federal Treasury can alone be relieved from the expense of supporting territorial Governments. Besides, Congress will never lend a deaf ear to a people anxious to enjoy the privilege of self government. Their application to become a State or States of the Union will be granted the moment this can be done with safety.

The third amendment of the Senate strikes from the Treaty the 10th Article.

It is truly unaccountable how this article should have found a place in the Treaty. That portion of it in regard to lands in Texas did not receive a single vote in the Senate. If it were adopted, it would be a mere nullity on the face of the Treaty, and the Judges of our Courts would be compelled to disregard it. It is our glory that no human power exists in this country which can deprive one individual of his property without his consent and transfer it to another. If grantees of lands in Texas, under the Mexican Government, possess valid titles, they can maintain their claims before our Courts of Justice. If they have forfeited their grants by not complying with the conditions on which they were made, it is beyond the power of this Government, in any mode of action, to render these titles valid either against Texas or any individual proprietor. To resusci-

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tate such grants and to allow the grantees the same period after the exchange of the ratifications of this Treaty to which they were originally entitled for the purpose of performing the conditions on which these grants had been made, even if this could be accomplished by the power of the government of the United States, would work manifold injustice.

These Mexican grants, it is understood, cover nearly the whole sea coast and a large portion of the interior of Texas. They embrace thriving villages and a great number of cultivated farms, the proprietors of which have acquired them honestly by purchase from the State of Texas. These proprietors are now dwelling in peace and security. To revive dead titles and suffer the inhabitants of Texas to be ejected under them from their possessions, would be an act of flagrant injustice if not wanton cruelty. Fortunately this Government possesses no power to adopt such a proceeding.

The same observations equally apply to such grantees in New Mexico and Upper California.

The present Treaty provides amply and specifically in its 8th and 9th Articles for the security of property of every kind belonging to Mexicans, whether acquired under Mexican grants or otherwise in the acquired territory. The property of foreigners under our Constitution and laws, will be equally secure without any Treaty stipulation. The tenth article could have no effect upon such grantees as had forfeited their claims, but that of involving them in endless litigation under the vain hope that a Treaty might cure the defects in their titles against honest purchasers and owners of the soil.

And here it may be worthy of observation that if no stipulation whatever were contained in the Treaty to secure to the Mexican inhabitants and all others protection in the free enjoyment of their liberty, property and the religion which they profess, these would be amply guarantied by the Constitution and laws of the United States. These invaluable blessings, under our form of Government, do not result from Treaty stipulations, but from the very nature and character of our institutions.

The fourth amendment of the Senate is to strike from the 11th Article, the following words: "nor to provide such Indians with fire arms or ammunition, by sale or otherwise."

This amendment was adopted on a principle of humanity. These Indians must live by the chase; and without fire arms they cannot secure the means of subsistence. Indeed, for the want of such arms, the extremity of hunger and suffering might drive them to commit the very depredations which the Treaty seeks to avoid, and to make incursions for food either upon the Mexican or American settlements. This Government possesses both the ability and the will to restrain the Indians within the extended limits of the United States from making incursions into the Mexican territories, as well as to execute all the other stipulations of the 11th article. We believe, however, that whilst to deprive them of fire arms and ammunition would be cruel, it would at the same time have a tendency to increase rather than to diminish their disposition to make hostile incursions.

The fifth amendment of the Senate to the twelfth article adopts the second mode of payment of the remaining $12.000.000, after the payment of the first $3000.000, in exclusion of the first mode pointed out by the Treaty. The amended article as it stands is as follows.

[Here follows the English version of Article 12]

It is not apprehended that the Mexican Government will have any difficulty in agreeing to this amendment. It is true that in case they should find it convenient to anticipate the receipt of the whole or any part of the $12,000.000, they might do this more readily were a stock to be created and transferable certificates issued for small and convenient sums; but yet no doubt is entertained that capitalists may be found who will be willing to advance any amount that might be desired upon the faith of a Treaty obligation solemnly entered into by the Government of the United States.

The sixth amendment of the Senate is to insert in the twenty third article after the word, "Washington", the words "or at the seat of Government of Mexico". The object of this amendment is to hasten the final conclusion of

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peace between the two Republics. Under it, should the President and Congress of Mexico agree to the Treaty as it has been amended by the Senate of the United States, the ratifications may be immediately thereafter exchanged at Queretaro and the happy consummation be at once accomplished.

The seventh and last amendment of the Senate is to strike out the additional article. This was done from the conviction that the period of four months from the date of the Treaty, the time allowed by the 23d Article for the exchange of ratifications, would be abundantly sufficient for this purpose: and this more especially as the ratifications may now, under the amendment of the Senate, be exchanged in Mexico. Besides, the idea of postponing the final conclusion of peace and keeping the present Treaty pending between the two governments until the 2nd October, next, could not be entertained by the Senate.

The President, by and with the advice and consent of the Senate, has appointed the Honorable Ambrose H. Sevier of the State of Arkansas and the Honorable Nathan Clifford of the State of Maine, Commissioners to Mexico with the rank of Envoy Extraordinary and Minister Plenipotentiary. Mr Sevier has for many years been a distinguished Senator of the United States, and for a considerable period has occupied the highly responsible station of Chairman of the Committee on Foreign Relations; and Mr Clifford is an eminent citizen of the State of Maine, is Attorney General of the United States and a member of the President's cabinet. They will bear with them to Mexico a copy of the Treaty with the amendments of the Senate duly ratified by the President of the United States; and have been invested, either jointly or severally, with full powers to exchange ratifications with the proper Mexican authorities. That this final act may be speedily accomplished and that the result may be a sincere and lasting peace and friendship between the two Republics, is the ardent desire of the President and people of the United States.

I avail myself of this occasion to offer to Your Excellency the assurance of my most distinguished consideration.

JAMES BUCHANAN

DEPARTMENT OF STATE,
Washington, 18th March, 1848.

P.S. I regret to inform Your Excellency that Mr Sevier has been seized with a sudden illness which renders him unable to depart immediately upon his mission. The two Commissioners, however, have been invested with full and equal powers to execute their instructions severally, as well as jointly, and the acts of the one will be of equal validity with the acts of both. No delay can therefore be experienced on this account. It is expected that Mr Sevier will be able to leave for Mexico in a week or ten days.

THE RATIFICATIONS

There is nothing unusual in the form of the duplicate United States instrument of ratification, which is part of the treaty file; it is to be noted that it recites the amendments in English only; but on the date of the ratification there was doubtless no Spanish equivalent of such of them as required a Spanish version; the wording of the instrument follows:

James K. Polk, President of the United States of America,

To all and singular who shall see these presents, Greeting:

Whereas a Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic, together with an additional and secret article, was concluded and signed at the City of Guadalupe Hidalgo on the second day of February last past, which Treaty and additional and secret article, are hereunto annexed;

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And whereas, the Senate of the United States, by their Resolution of the tenth instant—two thirds of the Senators present concurring—did advise and consent to the ratification of the Said Treaty, with the following "Amendments:—

[Here follow the amendments as in the Senate resolution]

Now, therefore, be it known, that I, James K. Polk, President of the United States of America, in pursuance of the aforesaid advice and consent of the Senate, do hereby ratify and confirm the said Treaty, as amended by the Senate of the United States, and every article and clause thereof.

In testimony whereof, I have caused the Seal of the United States to be hereunto affixed.

Given under my hand, at the City of Washington, the sixteenth day of March, in the year of Our Lord one thousand eight hundred and forty-eight;
[Seal] and in the seventy-second year of the Independence of the United States of America.

JAMES K. POLK

By the President:
JAMES BUCHANAN
Secretary of State.

The Mexican instrument of ratification is written in Spanish and includes the treaty text in both languages, the Spanish in the left columns, and similarly includes a statement of the amendments. The form of the instrument is as follows (omitting various texts):

	[Translation]
Manuel de la Peña y Peña Presidente interino de los Estados Unidos Mexicanos	Manuel de la Peña y Peña, President *ad Interim* of the United Mexican States
A todos los que las presentes vieren sabed:	To all to whom these presents may come, be it known:
Que en la Ciudad de Guadalupe Hidalgo se concluyó y firmó el día dos de Febrero del presente año, un tratado de paz, amistad, límites y arreglo definitivo entre los Estados Unidos Mexicanos y los Estados Unidos de América por medio de Plenipotenciarios de ambos Gobiernos autorizados debida y respectivamente para este efecto, cuyo tratado y su artículo adicional son en la forma y tenor siguiente.	That in the city of Guadalupe Hidalgo there was concluded and signed on the second day of February of the present year a Treaty of Peace, Friendship, Limits, and Definitive Settlement between the United Mexican States and the United States of America, by Plenipotentiaries of both Governments duly and respectively thereunto authorized, which treaty and its additional article are of the following form and tenor:

[Here follow the texts of the treaty and the additional and secret article, as signed, in Spanish and English]

Y que este tratado recibió en diez de Marzo de este año en los Estados Unidos de América las modificaciones [1] siguientes:	And that this treaty received on March tenth of this year in the United States of America the following amendments: [1]

Se insertará en el artículo III despues de las palabras "República Mexicana", donde primero se encuentren, las palabras—"y cangeadas las ratificaciones."

Se borrará el artícº IX del tratado, y en su lugar se insertará el siguiente

. . . . . .

[1] The English of the amendments is omitted.

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Se suprime el artículo X del Tratado.
Se suprimen en el artículo XI del Tratado las palabras siguientes:
"ni enfin, venderles ó ministrarles bajo cualquier título armas de fuego ó municiones."
Se suprimen en el artículo XII las palabras siguientes:

. . . . . .

Se insertarán en el artículo XXIII despues de la palabra "Washington" las palabras siguientes:
"ó donde estuviere el gobierno Mexicano."
Se suprime el artículo adicional y secreto del Tratado.

Visto y examinado dicho Tratado y las modificaciones hechas por el Senado de los Estados Unidos de América, y dada cuenta al Congreso general conforme á lo dispuesto en el párrafo XIV del artículo 110. de la Constitucion federal de estos Estados-Unidos, tuvo á bien aprobar en todas sus partes el indicado Tratado y las modificaciones; y en consecuencia, en uso de la facultad que me concede la Constitucion acepto, ratifico y confirmo el referido tratado con sus modificaciones y prometo en nombre de la República Mexicana cumplirlo y observarlo, y hacer que se cumpla y observe.

Dado en el Palacio federal de la ciudad de Santiago de Querétaro, firmado de mi mano, autorizado con el gran sello nacional y refrendado por el Secretario de Estado y del despacho de relaciones interiores y exteriores á los treinta dias del mes de Mayo del año del Señor de mil ochocientos cuarenta y ocho y de la Independencia de la República el vigésimo octavo.

[Seal]

MANUEL DE LA PEÑA Y PEÑA
LUIS DE LA ROSA
Secretº de Estado y de Relaciones.

The said treaty and the amendments made by the Senate of the United States of America having been noted and examined, the General Congress, having been advised thereof in conformity with the provisions of section XIV of Article 110 of the Federal Constitution of these United States, saw fit to approve the said treaty in all its parts and the amendments thereto; and consequently, exercising the powers granted me by the Constitution, I accept, ratify, and confirm the treaty referred to, with its amendments, and I promise in the name of the Mexican Republic to fulfil it and observe it and cause it to be fulfilled and observed.

Done at the Federal Palace of the city of Santiago de Querétaro, signed by my hand, authenticated by the great seal of the nation, and countersigned by the Secretary of State and of Domestic and Foreign Relations on the thirtieth day of the month of May of the year of our Lord one thousand eight hundred and forty-eight and of the independence of the Republic the twenty-eighth.

[Seal]

MANUEL DE LA PEÑA Y PEÑA
LUIS DE LA ROSA
Secretary of State and of Relations.

THE PROCLAMATION

The original proclamation in the treaty file is written so as to provide that in printed copies thereof the amended English and Spanish versions would appear as a running text; it is in this form:

By the President of the United States of America.

A PROCLAMATION:

Whereas a Treaty of Peace, Friendship, limits, and settlement between the United States of America and the Mexican Republic, was concluded and signed at the City of Guadalupe Hidalgo, on the second day of February, one thousand eight hundred and forty-eight, which Treaty, as amended by the Senate of the

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United States, and being in the English and Spanish languages, is word for word as follows:

[Here follow the second originals of the treaty and the additional and secret article]

And whereas the said Treaty, as amended, has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Querétaro, on the thirtieth day of May last, by Ambrose H. Sevier and Nathan Clifford, Commissioners on the part of the Government of the United States, and by Señor Don Luis de la Rosa, Minister of Relations of the Mexican Republic, on the part of that Government:

Now, therefore, be it known, that I, James K. Polk, President of the United States of America, have caused the said Treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the City of Washington, this fourth day of July, one thousand eight hundred and forty-eight, and of the Independence of the United States
[Seal] the seventy-third.

JAMES K. POLK

By the President:
JAMES BUCHANAN
Secretary of State.

The treaty, with sundry papers, was communicated to Congress with the presidential message of July 6, 1848, recommending legislation in aid of the execution of the treaty (Richardson, IV, 587–93); and with the presidential message to the House of Representatives of July 24 (*ibid.*, 594–600), in response to a request of that body, information regarding several points of inquiry, one of which was the "proper limits and boundaries of New Mexico and California", was communicated; the messages and accompanying papers are printed, respectively, in House Executive Documents Nos. 69 and 70, 30th Congress, 1st session, serial 521; the list of papers in the former of those two documents (at p. 33) is incomplete; the same material as that therein contained is also in Senate Executive Document No. 60 of the same session, serial 509.

THE INSTRUCTIONS

The statute which recognized the existence of a state of war between the United States and Mexico became law on May 13, 1846 (9 Statutes at Large, 9–10), following the presidential message of May 11 (Richardson, IV, 437–43). The annual presidential message of the following December 8 (*ibid.*, 471–506), was in large part devoted to the war and relations with Mexico; it was stated that military possession had been acquired "of the Mexican Provinces of New Mexico, New Leon, Coahuila, Tamaulipas, and the Californias" (*ibid.*, 493); and the recommendation previously made (to the Senate August 4 and to Congress August 8, 1846; *ibid.*, 456–57, 459–60) for "an appropriation to provide for any expenditure which it may be necessary to make in advance for the purpose of settling all our difficulties with the Mexican Republic" was renewed (*ibid.*, 494–95).

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An act appropriating $3,000,000 "to enable the President to conclude a treaty of peace, limits, and boundaries with the Republic of Mexico, to be used by him in the event that said treaty, when signed by the authorized agents of the two governments, and duly ratified by Mexico, shall call for the expenditure of the same", became law on March 3, 1847 (9 Statutes at Large, 174).

Between the two Governments there had been earlier correspondence (initiated by the United States) regarding the conclusion of peace; but the overtures of the United States had led to no result (the American note of July 27, 1846, a translation of the Mexican note of August 31, 1846, and the American note of September 26, 1846, are printed in Senate Document No. 1, 29th Congress, 2d session, serial 493, pp. 42–45; the American note of January 18, 1847, and a translation of the Mexican note of February 22, 1847, are printed in Senate Executive Document No. 1, 30th Congress, 1st session, serial 503, pp. 36–38).

Following the victory of General Zachary Taylor at Buena Vista (February 22–23) and the taking of Veracruz (March 29), it was decided in Cabinet to make a further effort for a treaty by "having a commissioner vested with Plenipotentiary powers, who should attend the head-quarters of the army ready to take advantage of circumstances as they might arise to negotiate for peace" (Polk's Diary, II, 465, April 10, 1847). The reasons for the choice made are thus stated (*ibid.*, 466–67):

> The embarrassment in carrying it out consisted in the selection of a suitable commissioner or commissioners who would be satisfactory to the country. This was a great difficulty. Such is the jealousy of the different factions of the Democratic party in reference to the next Presidential Election towards each other that it is impossible to appoint any prominent man or men without giving extensive dissatisfaction to others, and thus jeopardizing the ratification of any Treaty they might make. In this also the Cabinet were agreed. I stated that I preferred that the Secretary of State should be the sole commissioner to negotiate the Treaty, & that I would have no hesitation in deputing him on that special service if the Mexican authorities had agreed to appoint commissioners on their part, but as they had refused to do this he could not attend the head-quarters of the army for an indefinite period of time and with no assurance whether the Mexican authorities would agree to negotiate. Mr. Buchanan expressed his entire concurrence in this view. He said he would be willing to go in person if there was any assurance that negotiations would be speedily opened, but under existing circumstances & with our present information he could not, of course, think of going. Mr. Buchanan then suggested that Mr. N. P. Trist, the chief clerk of the Department of State, might be deputed secretly with Plenipotentiary powers to the head-quarters of the army, and that it might be made known that such a person was with the army ready to negotiate. Mr. Trist, he said, was an able man, perfectly familiar with the Spanish character and language, & might go with special and well defined instructions. The suggestions struck me favourably. After much conversation on the subject it was unanimously agreed by the Cabinet that it would be proper to send Mr. Trist, and that he should take with him a Treaty drawn up by the Secretary of State & approved by the Cabinet, which he should be authorized to tender to the Mexican Government, and to conclude with them if they would accept it; but that if they would not accept it, but would agree to appoint commissioners to negotiate, that Mr. Trist should in that event report the fact to his Government, when Mr. Buchanan could go out as the commissioner.

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Accordingly, on April 15, 1847, Nicholas P. Trist, Chief Clerk of the Department of State, was appointed "Commissioner of the United States to the Mexican Republic"; to him on that date were given a full power (the text of which appears elsewhere in these notes) and a letter of credence (D.S., 3 Credences, 213), and also instructions, which, with the draft of a proposed treaty, were as follows (D.S., 16 Instructions, Mexico, 46–62):

Since the glorious victory of Buena Vista and the capture of Vera Cruz and the Castle of San Juan d'Ulloa by the American arms, it is deemed probable that the Mexican Government may be willing to conclude a Treaty of Peace with the United States. Without any certain information, however, as to its disposition, the President would not feel justified in appointing public Commissioners for this purpose and inviting it to do the same. After so many overtures rejected by Mexico, this course might not only subject the United States to the indignity of another refusal, but might, in the end, prove prejudicial to the cause of peace. The Mexican Government might thus be encouraged in the mistaken opinion which it probably already entertained respecting the motives which have actuated the President in his repeated efforts to terminate the war. He deems it proper, notwithstanding, to send to the Head Quarters of the Army a confidential agent fully acquainted with the views of this Government and clothed with full powers to conclude a Treaty of Peace with the Mexican Government, should it be so inclined. In this manner he will be enabled to take advantage, at the propitious moment, of any favorable circumstances which might dispose that Government to peace. The President, therefore, having full confidence in your ability, patriotism and integrity, has selected you as a Commissioner to the United Mexican States to discharge the duties of this important mission, and for your services in this character, you will be allowed the outfit and salary of a Chargé d'Affaires.

You are herewith furnished with the Projet of a Treaty (marked A,) embraced in eleven articles and founded upon just and liberal principles towards Mexico, which, together with your instructions, you may communicate confidentially to Major General Scott and Commodore Perry.

Should a Mexican Plenipotentiary meet you, duly authorized by his Government to conclude a Treaty of Peace, you will, after a mutual exchange of your full powers, deliver him a copy of this Projet with the sum in blank contained in the 5th article, as a consideration for the extension of our boundaries, and inform him that you are prepared to sign it on behalf of the Government of the United States, as soon as the sum with which the blank is to be filled shall be agreed upon by the parties. This sum ought to be as much below the fifteen millions mentioned in the article, as you can accomplish. Considering the heavy expenses and sacrifices of the war on our part, and the brilliant success of our arms, as well as the large amount which, under the projet, this Government has assumed to pay our own citizens for claims due to them by Mexico, justice would seem to require that the Treaty should not stipulate for the payment of any very large sum. You may in conversation with him ascertain what change in the terms of the projet the Mexican Government would require: and if this should become indispensable to attain the object, you may modify these terms, including the amount to be paid to Mexico, in the following particulars.

1. Instead of fifteen millions of dollars stipulated to be paid by the fifth article for the extension of our boundary over New Mexico and Upper and Lower California, you may increase the amount to any sum not exceeding thirty millions of dollars, payable by instalments of three millions per annum; provided the right of passage and transit across the Isthmus of Tehuantepec secured to the United States by the eighth article of the projet, shall form a part of the Treaty.

2. Whilst it is of the greatest importance to the United States to extend their boundaries over Lower California as well as New Mexico and Upper California, you are not to consider this as a sine qua non to the conclusion of a Treaty. You will, therefore, not break off the negotiation if New Mexico and Upper California can alone be acquired. In that event, however, you will not stipulate to pay more than twenty millions of dollars for these two Provinces, without the right of passage and transit across the Isthmus of Tehuantepec.

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3. You are authorized to stipulate for the payment of any sum not exceeding twenty five millions of dollars for New Mexico and Upper California, without Lower California, provided the stipulation securing the right of passage and transit across the Isthmus of Tehuantepec shall be retained in the Treaty or if this should be stricken out, you are authorised to stipulate for the payment of the like sum of twenty five millions of dollars for Lower California in addition to New Mexico and Upper California.

Should Lower California not be embraced in the Treaty, then it will become necessary to change the delineation of boundary contained in the fourth article of the projet in the following manner: Instead of the concluding words "to the Pacific Ocean", let it read, "to a point directly opposite the division line between Upper and Lower California; thence, due West, along the said line which runs north of the parallel of 32° and South of San Miguel to the Pacific Ocean: and the vessels and citizens of the United States shall in all time to come have free and uninterrupted access to and from the ocean through the Gulf of California from and to their possessions north of the said division line."

You will not fail to observe that the sums of thirty, twenty and twenty five millions of dollars, respectively, which you are authorized to offer, are all maximums; and you will not go to the extent of either, unless you shall find this absolutely necessary to the conclusion of a Treaty. You will not exceed the fifteen millions of dollars contained in the fifth article of the Projet until you shall have good reason to believe that the Mexican Government would break off the negotiation unless it should be increased; and in departing from this sum, you will go as little beyond it as practicable.

Whilst it would be most convenient for the Treasury of the United States to pay any sum for which you may stipulate in annual instalments of three millions each; yet this is not indispensable. If necessary, therefore, to the conclusion of the Treaty, you may agree that, for the remainder of the sum, above the three millions of dollars to be paid upon its ratification by Mexico, the Government of the United States shall create a six per cent stock, similar to that created for the purchase of Louisiana, to be transferred to the Government of Mexico, the interest on the same to be payable annually at the City of Washington, and the principal to be redeemable there at the pleasure of this Government any time after two years from the exchange of ratifications.

Should this stock not be created, then if insisted upon by the Mexican Government, each of the annual instalments may bear an interest of six per cent, but the interest on each instalment to be payable only when the principal shall be paid.

If you can obtain the postponement of the payment of the whole or any part of the three millions of dollars stipulated to be paid by the projet immediately after the ratification of the Treaty by Mexico until the ratifications shall have been exchanged, this would be highly satisfactory to the President.

The rights of the persons and property of the inhabitants of the territory over which the boundaries of the United States shall be extended, will be amply protected by the Constitution and laws of the United States. An article, therefore, to secure these rights has not been inserted in the projet: but should this be deemed necessary by the Mexican Government, no strong objection exists against inserting in the Treaty an article similar to the third article of the Louisiana Treaty. It might read as follows: "The inhabitants of the territory over which the jurisdiction of the United States has been extended by the fourth article of this Treaty, shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess."

In the event of the insertion of this article, it would be proper to add to it the following: "Provided that all grants or concessions whatever of any lands, made or issued by the Mexican Government, since the thirteenth day of May, one thousand eight hundred and forty six, within the said territory, shall be absolutely null and void." The date might if necessary be changed from the day when Congress recognized the existence of the war, to the month of September, 1846, when the American forces took possession of California.

The extension of our boundaries over New Mexico and Upper California for a sum not exceeding twenty millions of dollars, is to be considered a sine qua non of

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any Treaty. You may modify, change or omit the other terms of the Projet, if needful, but not so as to interfere with this ultimatum.

If you should not succeed in accomplishing the chief object of your mission, you are authorized to make the necessary preliminary arrangements with the Mexican Government for the conclusion of a Treaty of Peace by Commissioners to be appointed by both parties, according to the proposition contained in my note of the 18th January, last, to the Mexican Minister of Foreign Relations: provided a reasonable prospect shall exist that such Mexican Commissioners will agree to the ultimatum which I have specified.

So rapidly does revolution follow revolution in Mexico, that it would be difficult to conjecture what form of Government you may find in existence over that ill fated country, on your arrival at the Head Quarters of the Army. The constitution of 1824 may then have been abolished and a dictatorship be again existing in its stead. You will not hesitate, however, to conclude a Treaty with whatever Government you shall find there upon your arrival, provided it presents a reasonable prospect of being able to maintain itself. Should a Dictator be established who has subverted the Constitution of 1824 and acquired the supreme power, his ratification of the Treaty will be sufficient without the previous approbation of the General Congress. Were this Government to refuse to conclude a Treaty of Peace until the Mexican Government shall assume any permanent constitutional form, the war might yet continue for many years to come.

If the contingency shall occur on the happening of which, as provided by the third article of the proposed Treaty, hostilities are required to be suspended, you will, without delay, communicate this fact to the commanders of our land and naval forces respectively; the Secretaries of War and the Navy having already issued orders to them for the suspension of hostilities upon the receipt of such a notice from yourself.

You will herewith receive a certificate from the Secretary of the Treasury that your draught in favor of the Mexican Government for the whole or any part of the three millions of dollars appropriated by the Act of Congress of the 3d March, 1847, entitled "An Act making further appropriation to bring the existing war with Mexico to a speedy and honorable conclusion", will be duly honored. You will be exceedingly careful not to draw for any part of this sum until the conditions required by that Act shall have been fully complied with and the Treaty which you may sign with the authorized agent or agents of the Mexican Government has been "duly ratified by Mexico". As the disbursement of so large a sum is a matter of great importance, you should use every precaution to be certain that your draughts shall be drawn in favor of the proper functionary of the Mexican Government and the whole business transacted in such a manner that no difficulty can hereafter arise on the subject. You will take receipts in triplicate for any draught or draughts which you may draw, which ought, if possible, to be signed by the President of Mexico and countersigned by the Minister of Finance.

A. Projet.

The United States of America and the United Mexican States, desirous of terminating the war which has unhappily subsisted between the two Republics, and of restoring peace, friendship and good understanding between them, have, for that purpose, appointed their respective Plenipotentiaries, that is to say; the President of the United States has appointed Nicholas P. Trist, &c. &c. &c.
and— who, after a reciprocal communication of their respective full powers, have agreed upon the following articles.

ARTICLE I.

There shall be a firm and universal peace between the United States of America and the United Mexican States, and between their respective countries, territories, cities, towns and people, without exception of places or persons. All hostilities, both by sea and land, shall definitively cease, so soon as the ratifications of this Treaty shall have been exchanged by the parties.

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ARTICLE II.

All prisoners of war taken on either side, as well by land as by sea, shall be restored as soon as practicable after the exchange of the ratifications of this Treaty.

[And it is further agreed that if any Mexican citizens should now be held as Captives by the Comanches or any other savage tribe of Indians within the limits of the United States as established by this treaty the Government of the United States will require the release of said Captives and their restoration to liberty and to their homes in Mexico.] [1]

ARTICLE III.

So soon as the present Treaty shall have been duly ratified by the United Mexican States, this fact shall be made known with the least possible delay to the military and naval commanders of both parties, whereupon a suspension of hostilities shall take place, both by land and by sea, as well on the part of the military and naval forces of the United States as on the part of those of the United Mexican States, and the said suspension of hostilities shall be inviolably observed on both sides. Immediately after the exchange of the ratifications of the present Treaty, all the forts, territories, places and possessions whatsoever taken by the United States from the United Mexican States during the war, except such as are embraced within the limits of the United States as defined by the fourth article of this Treaty, shall be restored without delay, and without causing any destruction or carrying away of the artillery or other public property originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this Treaty. And in like manner, all the forts, territories, places and possessions whatsoever taken by the United Mexican States from the United States during the war; and, also, all such forts, territories, places and possessions embraced within the limits of the United States under the fourth article of this Treaty, shall be restored, evacuated and delivered over to the United States without delay, and without causing any destruction or carrying away any of the artillery or other public property from the said forts or places and which shall remain therein upon the exchange of the ratifications of this Treaty.

ARTICLE IV.

The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues from land opposite the mouth of the Rio Grande, from thence up the middle of that river to the point where it strikes the Southern line of New Mexico, thence Westwardly along the Southern boundary of New Mexico to the South Western corner of the same, thence Northward along the Western line of New Mexico until it intersects the first branch of the River Gila, or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch and thence in a direct line to the same and down the middle of said branch of the said River until it empties into the Rio Colorado, thence down the middle of the Colorado and the middle of the Gulf of California to the Pacific Ocean.

ARTICLE V.

In consideration of the extension of the boundaries of the United States as defined by the last preceding article, the United States agree to pay to the United Mexican States at the City of Vera Cruz, the sum of fifteen millions of dollars, in five equal annual instalments, each of three millions of dollars, the first instalment to be paid immediately after this Treaty shall have been duly ratified by the Government of the United Mexican States.

[1] The words in brackets are from Trist Papers, 23:59980; subjoined is this memorandum, initialed by Trist: "The day preceding my departure from Washington, this paper was placed in my hands by Mr Buchanan, who said that it had been proposed by Mr Walker in cabinet, & assented to. Mr. B desired me to insert it in the treaty if I found it would promote the object." Trist left Washington on his mission on April 16, 1847.

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ARTICLE VI.

As a further consideration for the extension of the boundaries of the United States as defined by the fourth article of this Treaty, the United States agree to assume and pay to the claimants all the instalments now due or hereafter to become due, under the Convention [Document 100] between the two Republics concluded at the City of Mexico on the 30th day of January, 1843 "further to provide for the payment of awards in favor of claimants under the Convention between the United States and the Mexican Republic of the 11th April, 1839". And the United States also agree to assume and pay to an amount not exceeding three millions of dollars, all claims of citizens of the United States not heretofore decided against the Government of the United Mexican States, which may have arisen previous to the thirteenth of May, 1846, and shall be found to be justly due by a Board of Commissioners to be established by the Government of the United States, whose awards shall be final and conclusive: provided, that in deciding upon the validity of these claims, the Board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth articles of the unratified Convention concluded at the City of Mexico, on the 20th day of November, AD 1843; and, in no case, shall an award be made in favor of any claim not embraced by these principles and rules. And the United States do hereby forever discharge the United Mexican States from all liability for any of the said claims, whether the same shall be rejected or allowed by the said Board of Commissioners.

ARTICLE VII.

If in the opinion of the said Board of Commissioners, or of the claimants, any books, records or documents in the possession or power of the Government of the United Mexican States shall be deemed necessary to the just decision of any of said claims, the Commissioners, or the claimants through them, shall within such period as Congress may designate, make a demand in writing for the same, addressed to the Mexican Minister for Foreign Affairs, to be transmitted by the Secretary of State of the United States; and the Mexican Government engages, at the earliest possible moment after the receipt of such demand, to cause any of the said books, records, or documents in their possession or power, which shall be specified, to be transmitted to the said Secretary of State, who shall immediately deliver them over to the said Board of Commissioners: Provided that no such demand shall be made at the instance of any claimant, until the facts which it is expected to prove by such books, records or documents, shall first have been stated, under oath or affirmation.

ARTICLE VIII.

The Government of the United Mexican States hereby grant and guarantee forever to the Government and citizens of the United States, the right to transport across the Isthmus of Tehuantepec, from sea to sea, by any modes of communication now existing whether by land or water, free of any toll or charges whatever, all and any articles, the growth, produce or manufacture of the United States or of any foreign country belonging to the said Government or citizens; and also the right of free passage over the same to all citizens of the United States: And the Government of the United Mexican States, also, grant and guarantee to the Government and citizens of the United States the same right of passage for their merchandize and articles aforesaid as well as for such citizens over any rail road or canal which may hereafter be constructed across the said Isthmus by the Government of the United Mexican States or by its authority, paying no more than fair and reasonable tolls for the same: and no higher tolls and charges shall be levied and collected upon any of the before mentioned articles and merchandize belonging to the Government or citizens of the United States or upon the persons of such citizens, for passing over the said rail road or canal, than shall be levied and collected upon like articles and merchandize belonging to the Government or citizens of Mexico, being the growth, produce and manufacture of Mexico or of any foreign country, or upon the persons of such citizens. And none of the

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said articles whatever belonging to the Government or citizens of the United States, thus passing in transit over the said Isthmus from sea to sea, either by the existing modes of communication or over any rail road or canal which may hereafter be constructed, in either direction, for the purpose of being transported to any port of the United States or of any foreign country, shall be liable to any import or export duty whatever. The two Governments hereby engage, with as little delay as possible, mutually to agree upon such regulations as may be necessary to prevent fraud and smuggling, in consequence of the right of passage thus granted and perpetually guarantied to the Government and citizens of the United States.

ARTICLE IX.

All goods, wares or merchandize which shall, during the war, have been imported into any of the ports or places of either party whilst in the military occupation of the other, by the citizens of either, or by the citizens or subjects of any neutral Power, shall be permitted to remain exempt from confiscation, or from any tax or duty upon the sale or exchange of the same, or upon the withdrawal of the said property from the country: and the owners thereof shall be permitted to sell and dispose of the said property in the same manner in all respects whatever, as if it had been imported into the country in time of peace and had paid the duties under the laws of either party, respectively.

ARTICLE X.

The Treaty of Amity, Commerce and Navigation [Document 70] concluded at the City of Mexico on the 5th day of April, AD 1831, between the United States of America and the United Mexican States, and every article thereof, with the exception of the additional article, are hereby revived for the period of eight years from the day of the exchange of the ratifications of this Treaty, with the same force and virtue as if they made part of the context of the same; it being understood that each of the contracting parties reserves to itself the right at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

ARTICLE XI.

This Treaty shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by the President of the United Mexican States, with the previous approbation of their General Congress: and the ratifications shall be exchanged in the City of Washington within six months from the date of the signature hereof, or sooner if practicable.

In faith whereof, we, the respective plenipotentiaries, have signed this treaty and have hereunto affixed our seals.
Done in Duplicate at the day of
AD one thousand eight hundred and forty seven.

With the instructions and draft of April 15, 1847, is to be read the following communication of the same date from Secretary of State Buchanan to the Mexican Minister of Foreign Relations, of which Trist was the bearer (D.S., 2 Communications to Foreign Sovereigns and States, 28–32):

To His Excellency, The MINISTER OF FOREIGN RELATIONS of the Mexican Republic.

DEPARTMENT OF STATE,
Washington, 15th April, 1847.

SIR: I have the honor to acknowledge the receipt of Your Excellency's note of the 22nd February, last, in answer to mine of the 18th of January, proposing on the part of the President of the United States immediately to despatch

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either to the Havana or Jalapa, as the Mexican Government may prefer, one or more of our most distinguished citizens as Commissioners clothed with full powers to conclude a Treaty of Peace with similar Commissioners on the part of Mexico, as soon as he shall be officially informed that the Mexican Government will appoint such Commissioners."

The President deeply regrets the refusal of the Mexican Government to accede to this friendly overture, "unless the raising of the blockade of our [the Mexican] ports and the complete evacuation of the territory of the Republic by the invading forces shall be previously accepted as a preliminary condition."

The President has instructed me to inform you that this "preliminary condition" is wholly inadmissible. Such a condition is neither required by the honor, nor sanctioned by the practice, of nations. If it were, this would tend to prolong wars, especially between conterminous countries, until the one or the other power was entirely subdued. No nation which, at the expenditure of blood and treasure, has invaded its enemy's country, and acquired possession of any considerable portion of his territory, could ever consent to withdraw its forces as a preliminary condition to the opening of negotiations for peace. This would be at once to abandon all the advantages it had obtained in the prosecution of the war, without any certainty that peace would result from the sacrifice. Nay more, should such a negotiation prove unsuccessful, the nation which had thus imprudently withdrawn its forces from the enemy's territory, might not be able to recover, without a cost of blood and treasure equal to that first expended, the advantageous position which it had voluntarily abandoned.

Fortunately for the cause of peace and humanity, the history of nations at war affords no sanction to such a preliminary condition. The United States are as jealous of their national honor as any power on the face of the earth; and yet it never entered into the contemplation of the great statesmen who administered our Government during the period of our last war with Great Britain, to insist that the latter should relinquish that part of our territory of which she was in actual possession before they would consent to open negotiations for peace. On the contrary, they took the initiative and appointed Commissioners to treat for peace whilst portions of our country were held by the enemy, and it is a remarkable fact that the Treaty of Ghent was concluded by the Plenipotentiaries of the two Powers whilst the war was raging on both sides; and the most memorable of the conflicts to which it gave rise, took place upon our own soil after the negotiators had happily terminated their labors. History is full of such examples. Indeed, so far as the Undersigned is aware, there is not to be found, at least in modern times, a single case except the present, in which it has been considered a necessary preliminary that an invading army should be withdrawn before negotiations for peace could commence between the parties to the war.

It would, also, be difficult to find a precedent for the course pursued by the Mexican Government in another particular. The President, anxious to avoid the war now existing, sent a Minister of Peace to Mexico, for this purpose. After the Mexican forces had attacked the army of General Taylor on this side of the Rio Grande and thus commenced the war, the President, actuated by the same pacific spirit, made repeated overtures to the Government of Mexico, to negotiate for its termination. And although he has, from the beginning, solemnly declared before the world that he desired no terms but such as were just and honorable for both parties, yet the Mexican Government, by refusing to receive our Minister in the first place and afterwards by not acceding to our overtures to open negotiations for peace, has never afforded to this Government even the opportunity of making known the terms on which we would be willing to settle all questions in dispute between the two Republics. The war can never end whilst Mexico refuses even to hear the proposals which we have always been ready to make for peace.

The President will not again renew the offer to negotiate, at least until he shall have reason to believe that it would be accepted by the Mexican Government. Devoted, however, to honorable peace, he is determined that the evils of the war shall not be protracted one day longer than shall be rendered absolutely necessary by the Mexican Republic. For the purpose of carrying this determination into effect, with the least possible delay, he will forthwith send to the headquarters of

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the army in Mexico, Nicholas P. Trist, Esq[r], the officer next in rank to the Undersigned in our Department of Foreign Affairs, as a Commissioner, invested with full powers to conclude a definitive Treaty of Peace with the United Mexican States. This gentleman possesses the entire confidence of the President and is eminently worthy of that of the Mexican Government.

The Undersigned refrains from all comment upon the concluding paragraph, as well as some other portions of Your Excellency's note; because the strong sense which he entertains of their injustice towards the United States could not be uttered in the friendly tone which he desires to preserve in the present communication. He turns from these, therefore, to dwell, as he does with unfeigned pleasure, upon the sentiment contained in an early part of the same note, where the Mexican Government expresses how painful it is "to see disturbed the sincere friendship which it cultivated with your [our] Republic, whose continued progress it has always admired, and whose institutions have served it as a model."

This feeling is most cordially reciprocated by the President, whose earnest desire it is, that the United Mexican States, under institutions similar to our own, may protect and secure the liberty of their people, and maintain an elevated standing among the nations of the earth.

The Undersigned embraces this occasion to offer to Your Excellency the assurance of his most distinguished consideration.

JAMES BUCHANAN.

In June and July the instructions to Trist were modified; excerpts from the later instructions follow (D.S., 16 Instructions, Mexico, 62–74):

[Instruction No. 2, June 14, 1847, excerpt]

Enclosed, I transmit you a copy of the orders issued on the 11th instant by the President to the Secretaries of War and of the Navy upon the Report of the Secretary of the Treasury of the day preceding in relation to the Mexican Tariff. From these you will perceive it has been announced to the world that the Government intend to provide by the Treaty with Mexico, that goods imported into any of the ports of that country whilst in our military possession, shall be exempt from any new import duty or charge after the conclusion of peace. This will render it necessary for you to insist upon the insertion of the 9th article of the Projet of the Treaty. Indeed, you may consider this as a sine qua non.

[Instruction No. 3, July 13, 1847, excerpt]

According to the suggestion in your despatch N[o] 6, you are authorized to modify the boundary contained in your instructions so as to make it read "up the middle of the Rio Grande to the 32nd degree of North Latitude, thence due west to a point due south of the south western angle of New Mexico, thence due north to the said angle, thence northward along the western line of New Mexico." &c. &c. &c. This modification, which would embrace the Paso del Norte within the limits of the United States, is deemed important: still you are not to consider it as a sine qua non nor suffer it to delay the conclusion of a Treaty.

I would suggest another and more important modification of the line; and this is to run it along the 32nd parallel of North Latitude from the Rio Grande to the middle of the Gulf of California and thence down the middle of the Gulf to the Pacific Ocean: or if this cannot be obtained, to run it due west from the southwest angle of New Mexico to the middle of the Gulf. Either of these lines would include within our limits the whole course of the Gila. From information derived from Major Emory,[1] the valley of that river presents a favorable route for a rail road to the Pacific; but this would sometimes pass on the one side and sometimes on the other of the bed of the stream. For this reason it is deemed important that the whole valley of that river should be included within the boundary of the

[1] William Hemsley Emory, of the Topographical Engineers, later Major General of Volunteers.

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United States. You are therefore, authorized and instructed to make the first, or if this cannot be obtained, the second modification above suggested in the line; but still with the understanding that neither of these two changes is to be considered a sine qua non, nor is it to delay the conclusion of a Treaty.

In case lower California cannot be obtained, then the line might be run on the parallel of 32° or due West from the South West corner of New Mexico to the Pacific Ocean. If the latter line should be adopted, care must be taken that San Miguel shall be included within our limits.

[Instruction No. 4, July 19, 1847, excerpt]

The more I reflect upon the subject, the better am I convinced of the importance of running the boundary line between the Rio Grande and the Gulf of California along the thirty second parallel of North Latitude. We cannot learn that the boundaries of New Mexico have ever been authoritatively and specifically determined; and difficulties might hereafter arise between the two Governments in ascertaining where the south western angle of New Mexico is situated. A conversation with Major Emory since the date of my last despatch, has convinced me still more of the importance of this modification.

You will therefore in the copy of the projet of a Treaty which you are instructed to present to the Mexican Plenipotentiary, if this be not too late, substitute the following, instead of the 4th article.

ARTICLE IV.

> The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues from the land, opposite the mouth of the Rio Grande, from thence up the middle of that river to the thirty second parallel of North latitude, from thence due west along this parallel of latitude to the middle of the Gulf of California, thence down the middle of the same to the Pacific ocean.

It is not intended that you shall make the parallel of 32°, instead of the River Gila, a sine qua non; but yet it is deemed of great importance that you should obtain this modification, if it be practicable.

If lower California cannot be obtained, then the line on the parallel of 32° might be extended to the Pacific ocean, taking care, in that event, to secure to our citizens, in accordance with your original instructions, "in all time to come, a free and uninterrupted access to and from the ocean through the Gulf of California from and to their possessions north of the said division line."

Major Emory, whilst in California,[1] has accurately ascertained the latitude of two important points in that country. The latitude of the town of San Diego is 32°, 44′, 59″. The harbor is some miles south of the town. The latitude of the mouth of the Gila where it empties into the Colorado, is 32°, 43′.

For the lines of boundary proposed in the various instructions to Trist, see Paullin, *op. cit.*, plate 94A and pages 64–65.

The range of discretion given to Trist by the instructions of April 15, 1847, was wide. The territorial cessions and rights desired by the Government of the United States were four: New Mexico, Upper California, Lower California, and the right of transit across the Isthmus of Tehuantepec. For the whole, Trist was authorized to agree to the payment of $30,000,000; for New Mexico and Upper

[1] Lieutenant Colonel Emory in 1846–47 had made a military reconnaissance from Fort Leavenworth to San Diego; his elaborate "Notes" thereon, extending to 416 pages, with plates and maps, are in Senate Executive Document No. 7, 30th Congress, 1st session, serial 505.

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California, which were a *sine qua non*, $20,000,000; and for those two regions, plus either Lower California or the right of transit across Tehuantepec, $25,000,000, each of the foregoing sums being a maximum.

In those instructions Trist was authorized, but not directed, to "communicate confidentially to Major General Scott and Commodore Perry" the terms of the proposed treaty and of his instructions. This proved to be a most unfortunate and ill-advised provision, as knowledge of the instructions and of the draft was, in fact, withheld from General Scott for about two weeks after the arrival of Trist at Veracruz. Trist was to proceed to the headquarters in Mexico of the Army which was under the command of Major General Winfield Scott. The American forces in Mexico were in a foreign country, remote from Washington in distance and in time of communication; they were actively engaged in hostilities; that negotiations for peace under such circumstances could be there conducted without the fullest knowledge and cooperation of the commander of the Army was almost impossible; and, if possible, was almost incredibly dangerous.

It is to be added that the orders of the War Department to General Scott (April 14, 1847) were drawn so as admirably to conceal the real intention of the authorities at Washington. As written, they stated that, in a certain undescribed contingency, a written notice from Trist was to be regarded as a direction from the President to suspend military operations. The language used was this (serial 509, pp. 118–19):

> The signal successes which have attended our military operations since the commencement of the present war, would seem to justify the expectation that Mexico will be disposed to offer fair terms of accommodation. With a view to a result so desirable, the President has commissioned Nicholas P. Trist, esq., of the State Department, to proceed to your head-quarters, or to the squadron, as to him may seem most convenient, and be in readiness to receive any proposals which the enemy may see fit to make for the restoration of peace.
>
> Mr. Trist is clothed with such diplomatic powers as will authorize him to enter into arrangements with the government of Mexico for the suspension of hostilities. Should he make known to you, in writing, that the contingency has occurred in consequence of which the President is willing that further active military operations should cease, you will regard such notice as a direction from the President to suspend them until further orders from this department, unless continued or recommenced by the enemy; but in so doing you will not retire from any place you may occupy, or abstain from any change of position which you may deem necessary to the health or safety of the troops under your command; unless, on consultation with Mr. Trist, a change in the position of your forces should be deemed necessary to the success of the negotiation for peace. Until hostilities, as herein proposed, shall be intermitted, you will continue to carry on your operations with energy, and push your advantages as far as your means will enable you to do.
>
> Mr. Trist is also the bearer of a despatch to the secretary of foreign affairs of the government of Mexico, in reply to one addressed to the Secretary of State here. You will transmit that despatch to the commander of the Mexican forces, with a request that it may be laid before his government, at the same time giving information that Mr. Trist, an officer from our department for foreign affairs, next in rank to its chief, is at your head-quarters or on board the squadron, as the case may be.
>
> You will afford Mr. Trist all the accommodation and facilities in your power to enable him to accomplish the objects of his mission.

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Of course, the "contingency" upon which military operations were to be suspended was in fact a reasonable one, for the conditions precedent were, according to the instructions to Trist and the treaty draft, the signing of a treaty of peace and its ratification on the part of Mexico; but anyone reading the War Department order by itself and without other information of the authority of Trist might reasonably conclude (as General Scott did) that Trist was empowered to direct a truce or armistice prior to negotiations; and authority such as that, if granted to a civilian at the headquarters of a commander of an independent army in the field, would have made the position of the latter impossible and would have invited disaster.

The mission of Trist was intended to be a complete secret; but within less than a week it became published news, greatly to the chagrin of the administration. Efforts to discover who was responsible for the disclosure were fruitless (Polk's Diary, II, 482–87, April 21–22, 1847; see the New York Herald, April 20, 1847).

Delivery of the American Note of April 15, 1847

The original despatches from Trist (with their enclosures) which are in the archives of the Department of State are bound in 14 Despatches, Mexico. Those despatches, except two, of May 25 and July 31, 1847, which are unnumbered and marked "private", are printed (more than half of them incomplete textually and some with enclosures in whole or in part omitted) in serial 509, pages 95–105, 150–384.

Trist arrived at Veracruz on May 6, 1847, and at once made plans to leave on May 8 for the headquarters of the Army. Scott was then at Jalapa; Puebla was occupied by American forces under Brevet Major General William J. Worth on May 15; Scott joined Worth on May 28. Points on the road from Veracruz to Mexico City are shown on the inset map in the lower left-hand corner of the Disturnell Map; and there is a profile of the route just to the right of that inset.

The most elementary considerations of common sense should have led Trist to await a conference with General Scott and the necessary valuable information which would thus have been made available to him, before taking any steps for the accomplishment of his mission. On the afternoon of the day of his arrival at Veracruz, however, Trist sent forward a letter [1] to General Scott, communications to him from the Secretary of War, and also, for delivery, the note (printed above) of April 15, 1847, from the Secretary of State to the Mexican Minister of Foreign Relations; that note was sealed; and Trist wrote that he "had no time to take a copy" of his own letter to Scott (D.S., 14 Despatches, Mexico, May 7, 1847, and the letter of Scott to Trist of the same day, a copy of which is with despatch No. 4, of May 21, 1847).

The answer of Scott was written from the headquarters of the Army at Jalapa on May 7. At the time the only papers available to Scott regarding the mission of Trist were the War Department order of

[1] The text of that letter of May 6, 1847, is not available.

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April 14, 1847 (quoted above), and Trist's letter of May 6, which was probably brief, as Scott called it a "note". Scott wrote in these terms (*ibid.*):

I have just received your note of yesterday, accompanied by communications to me from the Secretary of War & one (sealed!) from the Department of State to the Minister of foreign affairs of the Republic of Mexico.

You are right, in doubting, whether there be a government, even *de facto*, in this Republic. General Santa Anna, the nominal president, has been, until within a day or two, in the neighborhood of Orizaba, organizing bands of rancheros, banditti or guerillas, to cut off stragglers of this army, &, probably, the very train, all important to us, which you propose to accompany into the interior—the safety of which train has detained me here & caused me a high degree of solicitude. Hence I regret that Colonel Wilson, commanding at Veracruz, has allowed himself, a second time, to be persuaded, to detach, to bring up despatches (for your accommodation) a material portion of the force I had relied upon, as the escort of that train. The other detachment, to which I allude, came up, some days ago to escort Lieutenant Semmes, of the Navy, duly accredited, by Commodore Perry, to the Mexican Minister of foreign affairs, to negociate the exchange of Passed Midshipman Rogers, now a prisoner of war. That matter, also, seems to have been considered too important to be intrusted to my agency!

But to return to the actual government of Mexico. Señor Anaya, is, I believe, President *ad interim*. But you may have learned that the Congress, after hearing of the affair of Cerro Gordo, passed many violent decrees, breathing war, to the uttermost, against the U. States—declaring that the excutive has no power, & shall have none, to conclude a treaty, or even an armistice, with the U. States, & denouncing, as a traitor, any Mexican functionary who shall entertain either proposition. I have communicated a copy of those decrees to the War Department, &, until further orders, thereupon, or until a change of circumstances, I very much doubt whether I can so far commit the honour of my government as to take any direct agency in forwarding the sealed despatch you have sent me from the Secretary of State of the U. States.

On this delicate point, however, you will do as you please, & when, if able, I shall have advanced near to the capital, I may, at your instance, lend an escort to your flag of truce; & it may require a large fighting detachment to protect even a flag of truce against the rancheros & banditti who now infest the national road all the way up to the capital.

I see that the Secretary of War proposes to degrade me, by requiring that, I, the Commander of this army, shall defer to you, the Chief Clerk of the department of State, the question of continuing or discontinuing hostilities.

I beg to say to him & to you, that here, in the heart of a hostile country, from which, after a few weeks, it would be impossible to withdraw this army, without a loss, probably, of half its numbers, by the *vomito;*—which army, from necessity, must soon become a *self-sustaining machine*—cut off from all supplies & re-inforcements from home, until, perhaps, late in November;—not to speak of the bad faith of the government & people of Mexico;—I say, in reference to those critical circumstances, this army must take *military* security for its own safety. Hence the question of an armistice, or no armistice is, most peculiarly, a *military* question, appertaining of necessity, if not of universal right in the absence of direct instructions, to the commander of the invading forces. Consequently, if you are not clothed with military rank over me, as well as with diplomatic functions, I shall demand, under the peculiar circumstances, that, in your negociations, if the enemy should entertain your overtures, you refer that question to me, & all the securities belonging to it. The safety of this army demands no less, & I am responsible for that safety, until duly superseded or recalled. Indeed, from the nature of the case, if the enemy, on your petition, should be willing to concede an armistice, he would, no doubt, demand the military guaranty of my signature for his own safety.

Should you, under the exposition of circumstances I have given, visit the moveable head quarters of this army, I shall receive you with the respect due to a functionary of my government; but whether you would find me here, at Perote, Puebla, or elsewhere, depends on events changeable at every moment.

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The sealed despatch from the Department of State, I suppose you to desire me to hold until your arrival, or until I shall hear farther from you.

While the language used by Scott was perhaps unduly outspoken, there was nothing unreasonable in the substance of his attitude; in view of the wording of the War Department order to him, Scott, at the very least, was entitled to await the arrival of Trist at his headquarters and a disclosure of the program before sending to the enemy a sealed communication of the contents of which Scott was ignorant.

The interpretation which Scott gave to the War Department order of April 14, 1847, appears in his despatch to the Secretary of War of May 20 as follows (serial 509, pp. 124–27):

I understand your letter to me of the 14th ultimo as not only taking from me, the commander of an army under the most critical circumstances, all voice or advice in agreeing to a truce with the enemy, but as an attempt to place me under the military command of Mr. Trist; for you tell me that "should he make known to you, in writing, that the contingency has occurred in consequence of which the President is willing that further active military operations should cease, you will regard such notice as a direction from the President to suspend them until further orders from this department."

That is, I am required to respect the judgment of Mr. Trist here on passing events, purely military, as the judgment of the President, who is some two thousand miles off!

Trist, however, was enraged;[1] he arrived at Jalapa on May 14 and refrained from calling on Scott, to whom he wrote two violent letters (dated May 9 and 20), in all some eight thousand words; these were both delivered on the morning of May 21, as Scott was leaving for Puebla; in the letter of earlier date Trist gave some account of his instructions, particularly regarding the "contingency" on which hostilities were to be suspended; in the latter he absurdly presumed to deliver a detailed "message" as "the will, order, and command of the President of the United States" (D.S., 14 Despatches, Mexico, No. 4, May 21, 1847, enclosures; about half of the letter of May 9 and the whole of that of May 20 are printed in serial 509, pp. 159–68). All possibility of cooperation between the General and the Commissioner was ended for the time. The answer of Scott, of May 29, was couched in harsh and bitter terms. Two paragraphs referring to the War Department order of April 14, 1847, are excerpted (Trist Papers, 23 : 60068–69; printed in serial 509, pp. 172–73):

You tell me that you are authorized to negociate a treaty of peace with the enemy—a declaration which, as it rests upon your own word, I might well question; & you add that it was not intended, at Washington, that I should have

[1] General Scott later attributed the tone of the letters of Trist to the fact that Trist "fell ill at Vera Cruz, and was obliged to take much morphine to save life" (Memoirs, II, 579; see also Scott to Marcy, July 25, 1847, in serial 509, p. 135); but this appears to be mistaken. Trist wrote to his wife on May 8 from Veracruz that he was "in *superlative* health", on May 15 from Jalapa that he had reached there "in perfect health", and on May 21, June 3, and June 14 that he was "perfectly well" (Trist Papers, 23 : 60018, 60037, 60048, 60073, 60096). It seems, however, that he was seriously ill "for several weeks" during the latter part of June and early part of July (*ibid.*, 24 : 60156, 60160–61, 60164; D.S., 14 Despatches, Mexico, No. 9, July 23, 1847, postscript of July 25).

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any thing to do with the negociation. This I can well believe, & certainly have cause to be thankful to the President for not degrading me by placing me in any joint commission with you.

From the letter of the Secretary of War, to me, of the 14th ultimo, I had supposed you to be simply authorized to propose or to concede to the enemy, the truce or armistice, which usually precedes negociations for a peace; & my letter to you was written on that supposition. If the terms of military conventions are left to me, the commander of this army, I have nothing more to desire or to demand for its safety.

Scott returned the original American note of April 15, 1847, to Trist at Jalapa not later than May 20. On June 6, Trist wrote from Puebla to Charles Bankhead, British Minister to Mexico, informing him of his mission and inquiring whether Bankhead would receive and deliver the American note to the Mexican Minister of Foreign Relations, stating that of course an open copy would be given to Bankhead for his perusal. The latter at once sent Edward Thornton, of the staff of his Legation (later Sir Edward Thornton, Minister at Washington from 1868 to 1881), from Mexico City to Puebla, a journey then of some risk. Arriving there on June 10, Thornton interviewed separately both Scott and Trist, who were not yet on speaking terms. The American note of April 15 was entrusted to Thornton for Bankhead and was transmitted by the latter about June 15 to the Minister of Foreign Relations of Mexico, Domingo Ibarra (the three letters of Trist to Bankhead of June 6, 7, and 11, 1847, are printed in serial 509, pp. 181–85; see Rives, *op. cit.*, II, 440–42).

By the middle of June the authorities at Washington were very imperfectly informed of the correspondence between Trist and Scott. Copies of none of the three letters from the former to the latter (of May 6, May 9, and May 20) were at hand. Scott had sent to the Secretary of War a copy of his letter to Trist of May 7. The same letter was an enclosure to Trist's despatch of May 21; but only the original of the despatch last mentioned, and not the duplicate, had been received; it was the latter which contained copies of the letters of Trist of May 9 (in part) and of May 20. On the basis of that limited material, the comments made were critical of Scott rather than of Trist; but to Trist were given specific though rather belated directions to communicate to Scott his instructions and the treaty draft (see Polk's Diary, III, 57–59, 61–63, June 12 and 14–15, 1847; also the following in serial 509: Buchanan to Trist, June 14, 1847, pp. 112–13; the first sentence of Buchanan to Trist, July 13, 1847, p. 113; Scott to Marcy, May 7, 1847, pp. 119–20; Marcy to Scott, May 31, 1847, pp. 121–24; the same to the same, June 15, 1847, pp. 127–29).

A month later there were other communications available, namely, the letters of Trist to Scott of May 9 (in part) and May 20 and the answer of Scott of May 29, although the opening letter of the entire correspondence (that of Trist of May 6) had not been and apparently was not at any time later received either by the Department of State or by the War Department. Official criticism now extended to Trist as well as to Scott; even the recall of both was discussed; but action

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went no further than reproof; and in the admonitions written by the Secretary of State and the Secretary of War it was recognized that it was unfortunate that Scott had not from the outset been made fully acquainted with the character and objects of the mission of Trist and it was said that such had been the intention and expectation of the Government. What had been lacking three months earlier was neither expectation nor intention but specific direction and order (see Polk's Diary, III, 76–79, 82–85, July 9 and 12–13, 1847; also the following in serial 509: Buchanan to Trist, July 13, 1847, pp. 113–17; Marcy to Scott, July 12, 1847, pp. 131–35).

In the meantime, relations between Scott and Trist had become cordial. In his despatch of July 23 from Puebla (D.S., 14 Despatches, Mexico, No. 9) Trist wrote that his official intercourse with General Scott, with reference to the mission of Trist, had been commenced by a letter of Trist of June 25 and the reply thereto; copies of these had been sent by Trist with his despatch No. 8, of July 7, in which he wrote that with the reply of Scott had come a message evincing "much good feeling" (No. 8 was not received at the Department of State; for it and the letter of Trist to Scott of June 25, 1847, see Trist Papers, 24 : 60164, 60117–18); Trist in his despatch No. 9 (printed in part in serial 509, p. 302) eulogizes in high terms the character and conduct of General Scott. Scott wrote on July 25 that he had found Trist "able, discreet, courteous, and amiable" (*ibid.*, 135–37); and each suggested with approval the suppression of their earlier correspondence.

The Mexican Note of June 22, 1847

The answer to the American note of April 15 was dated June 22, 1847. That answer was delivered to Trist at Puebla by the hands of Thornton, of the British Legation (see Rives, *op. cit.*, II, 442). It was in these terms (D.S., 4 Notes from the Mexican Legation, translation with the original):

To His Excellency the Secretary of State of the United States of America

Federal Palace, *June 22, 1847*

The undersigned, Minister of Internal and Foreign Relations, had the honor to receive Your Excellency's note, dated 15th of April last, in which you declare that His Excellency the President of the United States intends to despatch, as a commissioner to the headquarters of the Army, operating in Mexico, Nicholas P. Trist, Esq., the officer next in rank to Your Excellency, with full powers to conclude a definitive treaty of peace with the United Mexican States; and the most Excellent President *ad interim* of this Republic, to whom the undersigned immediately made known the contents of Your Excellency's said official note, has determined that you should be informed in reply that the decision on the affair in question, being reserved to the sovereign Congress of the nation, Your Excellency's said note is transmitted by him to that body in order that it may determine what should be deemed most proper on the subject. Its resolution shall be communicated in due time to Your Excellency by the department under the charge of the undersigned, who leaves for that occasion the answer to the points embraced in Your Excellency's said note.

The undersigned avails himself of this opportunity to offer to Your Excellency the assurances of his distinguished consideration

Domº Ibarra

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The question of peace was thus referred to the Mexican Congress (see, in *ibid.*, the translation of the message of Ibarra to "the Most Excellent Secretaries of the Sovereign Congress" dated June 22, 1847). A quorum of that body did not assemble until July 13. Antonio Lopez de Santa Anna, General in Chief and President *ad interim*, was in Mexico City; but there were legal and practical obstacles to negotiations.

Immediately following the Battle of Cerro Gordo (April 18), the Mexican Congress, on April 20, had passed a law which gave to the Executive broad powers but deprived him of authority to negotiate peace with the United States; indeed, by that statute peace negotiations would have been treason (Dublan y Lozano, Legislacion mexicana, V, 267–68). By the "Acta de reformas constitucionales" of May 18, 1847 (*ibid.*, 275–79), the constitutive act of January 31, 1824 (*ibid.*, I, 693–97), and the constitution of October 4, 1824 (*ibid.*, 719–37), were reaffirmed, subject to the "reformas" or amendments; it was a matter of debate and doubt whether the limitations of the law of April 20 were in force in view of the later enactment (see the summary of the message on behalf of Santa Anna dated July 16, 1847, signed by José Ramon Pacheco, who had succeeded Ibarra, in serial 509, pp. 302–5); but no decision on the point was reached (see Roa Bárcena, Recuerdos de la invasion norte-americana, 1846–1848, 284, and Smith, The War with Mexico, II, 393); indeed, it seems that the Mexican Congress did not meet to consider the message of July 16 (D.S., 14 Despatches, Mexico, No. 9, July 23, 1847); in that same despatch of July 23, Trist reported that Congress and the President had been "engaged in bandying between them the responsibility of the question presented by your note to the Minister of Foreign Relations"; and Thornton, of the British Legation, wrote to Trist on July 29 to the same effect regarding "the mutual endeavours of Congress & Santa Anna to put the responsibility of entering into negotiations upon each other" (*ibid.*, No. 10, July 31, 1847, enclosure).

It was during this period (July 1847) that proposals were made for a treaty on the basis of money, $10,000 to be paid down to one official and $1,000,000, upon the ratification of the treaty, "probably to be divided among many" (see Smith, *op. cit.*, II, 132–33, 390–91, and the writings there cited); Trist asked the cooperation of Scott in this plan by letter of July 16, and Scott wrote his assent on the next day (Trist Papers, 24:60202–8); the $10,000 was paid by Scott, but otherwise the plan wholly failed; nothing of it was known to Polk or his Cabinet until December 11, 1847 (see Polk's Diary, III, 245–46, 251–53, 262–63), although statements in the press on the subject had appeared during the previous two or three weeks (*ibid.* and Smith, *op. cit.*, II, 391); no report from General Scott regarding the scheme was received at Washington until February 19, 1848 (Polk's Diary, III, 340–41, 345–46); the communications of Trist to the Department of State contain no allusion to the proposals; the theory has been advanced that a letter from Trist to Thornton of July 3, 1847, a copy of which was enclosed with Trist's despatch No. 8, of July 7, 1847, should have suggested to Buchanan that "something

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peculiar was afoot" (Smith, *op. cit.*, II, 391); the text of that letter of Trist to Thornton (Trist Papers, 24:60158–59) would surely at the time have caused some wonder as to what was meant by the "suggestion upon certain points" which General Scott had offered to carry into effect; but neither Trist's despatch No. 8 (copy in *ibid.*, 60164) nor its enclosure is in the archives of the Department of State, and it seems certain that they were not received at Washington (see D.S., 16 Instructions, Mexico, 79–83, October 25, 1847, where it is said that Trist's No. 8 had not been received; also House Executive Document No. 60, 30th Congress, 1st session, serial 520, p. 830, footnote).

Negotiations Following the Armistice

As a result of the military operations of August 20, 1847, which were called by Scott the Battle of Mexico but which are now generally known as the Battles of Contreras (or Padierna) and Churubusco, the American forces were in a position to occupy the capital. Scott thus reported on the situation and on the events of the next few days in his despatch from Tacubaya of August 28, 1847 (Senate Executive Document No. 1, 30th Congress, 1st session, serial 503, pp. 306–15, at p. 314):

> After so many victories, we might, with but little additional loss, have occupied the capital the same evening [August 20]. But Mr. Trist, commissioner, &c., as well as myself, had been admonished by the best friends of peace—intelligent neutrals and some American residents—against precipitation; lest, by wantonly driving away the government and others—dishonored—we might scatter the elements of peace, excite a spirit of national desperation, and thus indefinitely postpone the hope of accommodation. Deeply impressed with this danger; and remembering our mission—to conquer a peace—the army very cheerfully sacrificed to patriotism—to the great wish and want of our country—the *eclat* that would have followed an entrance—sword in hand—into a great capital. Willing to leave something to this republic—of no immediate value to us—on which to rest her pride, and to recover temper—I halted our victorious corps at the gates of the city, (at least for a time,) and have them now cantoned in the neighboring villages, where they are well sheltered and supplied with all necessaries.
>
> On the morning of the 21st, being about to take up battering or assaulting positions, to authorize me to summon the city to surrender, or to sign an armistice with a pledge to enter at once into negotiations for peace—a mission came out to propose a truce. Rejecting its terms, I despatched my contemplated note to President Santa Anna—omitting the summons. The 22d, commissioners were appointed by the commanders of the two armies; the armistice was signed the 23d, and ratifications exchanged the 24th.
>
> All matters in dispute between the two governments have been thus happily turned over to their plenipotentiaries, who have now had several conferences, and with, I think, some hope of signing a treaty of peace.

The meeting of August 21 was at the village of Coyoacán; the proposal for a truce which General Scott rejected was made by General Mora y Villamil and was, it seems, verbal; it was for "an armistice of twelve months" (see Hitchcock, Fifty Years in Camp and Field, 279–80, 284, and Senate Executive Document No. 65, 30th Congress, 1st session, serial 510, pp. 450, 460); the previous admonitions "against precipitation" which Scott mentioned as coming from "intelligent neutrals and some American residents" are imperfectly reported (see Rives, *op. cit.*, II, 494–97, 502, and the writings there cited).

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At the same time there was delivered to Trist, with two covering notes from Bankhead, the following communication from the Mexican Minister of Foreign Relations to the Secretary of State (D.S., 14 Despatches, Mexico, No. 12, August 22, 1847, translation, somewhat revised; the Spanish text of the Mexican note of August 20 is printed in serial 509, pp. 189–90; copies of the two notes from Bankhead to Trist of August 20 and 21 are, respectively, enclosures 2 and 1 to the despatch last cited; they are printed, with unimportant omissions, in Rives, *op. cit.*, II, 497, 498):

PALACE OF THE FEDERAL GOVERNMENT
Mexico, August 20, 1847

To His Excellency the MINISTER OF FOREIGN AFFAIRS of the United States of America.

The undersigned, Minister of Domestic and Foreign Relations, has instructions from His Excellency the President *ad interim* of the Republic to say to His Excellency Mr. Buchanan, Minister of Foreign Affairs of the United States of America, that success in battles does not always accompany the justice of the cause for which they have been fought; in view of this fact and no other, if there be any other to consider, the Chief of the United Mexican States has fought until, because of events which it is unnecessary to recount, the troops of the said United States of America are within the gates of the capital; giving heed, therefore, to other duties which are also his, as First Magistrate of his country, and in the exercise of the powers which devolve on him under its Constitution, he has decided that the proposals which Mr. Nicholas Trist, appointed by the Government of the United States, may have to make should be heard, provided they be advantageous to both nations and safeguard the honor of the Mexican Republic, as has been continually said in the Congress at Washington and as the North American Minister assured the Government of Great Britain, and with the understanding that the Mexican Government will agree to the opening of preliminaries of peace, a treaty to be concluded within the period of a year thereafter, the same to be submitted, in accordance with the Constitution of the country, to the approval of the authority to which the Constitution assigns this power.

The nature of this communication does not permit of going into the details thereof, and the undersigned believes that what has been said is a sufficient reply to the note of His Excellency Mr. Buchanan of April 15 last, to whom on this occasion he presents the assurance of his distinguished consideration.

J. R. PACHECO

The offer of Scott to sign "a short armistice" was made by letter to Santa Anna dated at Coyoacán August 21, 1847, and was accepted the same day (serial 509, pp. 192–93, 308–9). The armistice was signed in English and Spanish at Tacubaya on August 23 by Major General John A. Quitman and Brigadier Generals Persifor F. Smith and Franklin Pierce, appointed by Scott, and by Brigadier Generals Ignacio de Mora y Villamil and Benito Quijano, appointed by Santa Anna, and was finally ratified by the two commanders on August 24 (for the English version,[1] see Senate Executive Document No. 65, 30th Congress, 1st session, serial 510, pp. 518–20; for the Spanish, serial 509, pp. 352–54; the English in *ibid.*, 310–13, is a translation from the Spanish; it will be seen from the prints of the text that the *alternat* was duly observed; Scott's proposed articles, which included a clause for the withdrawal of the Mexican forces from Chapultepec,

[1] The date in Article 16 of this print is erroneously August 22 instead of August 23, 1847.

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are in serial 510, pp. 543–44). As signed, the armistice contained sixteen articles, one of which, the ninth, was eliminated. The preamble and Articles 1 and 2 read as follows (*ibid.*, 518):

> The undersigned, appointed, respectively, the three first by Major General Winfield Scott, commander-in-chief of the armies of the United States, and the two last by his excellency D. Antonio Lopez de Santa Anna, president of the Mexican republic and commander-in-chief of its armies, met with full powers, which were duly verified, in the village of Tacubaya, on the 22d day of August, 1847, to enter into an armistice, for the purpose of giving the Mexican government an opportunity of receiving propositions for peace from the commissioner appointed by the President of the United States, and now with the American army, when the following articles were agreed upon:
>
> ART. 1. Hostilities shall instantly and absolutely cease between the armies of the United States of America and the United Mexican States, within thirty leagues of the capital of the latter States, to allow time to the commissioner appointed by the United States and the commissioners to be appointed by the Mexican republic to negotiate.
>
> 2. This armistice shall continue as long as the commissioners of the two governments may be engaged in negotiations, or until the commander of either of the said armies shall give formal notice to the other of the cessation of the armistice, and for forty-eight hours after such notice.

Just before the peace negotiations which ensued, Trist was very optimistic and completely mistaken regarding the outcome; he wrote on August 24 from the headquarters of the Army at Tacubaya: "The *negotiation* of a treaty I look upon as next to certain. The difficulty—and a most serious difficulty it threatens to prove—will lie in the *ratification*. . . . I have but little doubt of the practicability of negotiating a more favorable one than I shall dare to venture upon, keeping in view the ratification and the fact that without this nothing will have been done" (D.S., 14 Despatches, Mexico, No. 13; much of this despatch, including the words quoted, is omitted from the print in serial 509, pp. 190–91).

Following some preliminary correspondence between Trist and Pacheco (August 25 and 26; *ibid.*, 193–94), the first meeting of Trist and the Commissioners on the part of Mexico was held at the village of Atzcapotzalco, about eight miles from Tacubaya, on August 27, "late in the afternoon". Santa Anna had found some difficulty in the selection of the Mexican Commissioners (see *ibid.*, 317–25, 357–64). Those who were finally named were General of Division José Joaquin de Herrera, José Bernardo Couto, Brigadier General Ignacio de Mora y Villamil, and Miguel Atristain. Their full powers, of August 27, were very limited, authorizing them merely "to go to the town of Atzcapotzalco to receive and transmit to me the proposals mentioned which the said Mr. Nicholas Trist is to make" (D.S., 14 Despatches, Mexico, No. 14, August 29, 1847, enclosure, translation; the text of the full powers is printed in serial 509, p. 365, with a translation at pp. 325–26).

One relevant circumstance is of special interest. The gist of the instructions given to Trist, insofar as they concerned the boundary, was well known to the Mexican Government. When the negotiations

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now under consideration terminated (on September 6), Trist received the original of the instruction to him from Secretary of State Buchanan dated July 13, 1847, which is quoted in part above. That original instruction had been intercepted near Veracruz and was sent to Trist "open" by the Minister of Foreign Relations of Mexico (D.S., 14 Despatches, Mexico, No. 16, September 27, 1847, postscript dated September 28; the facts are noted by Trist on the original instruction in the Trist Papers, 24:60180). To read that instruction was to read a summary of the authority of Trist to treat regarding the line; in particular, it disclosed that Lower California was not a *sine qua non*.

At the first meeting of the Commissioners, Trist presented the project of a treaty which formed part of his instructions[1] of April 15, 1847, including (slightly revised) the clause added to Article 2 regarding Mexican citizens captured by Indian tribes (the text of the project is hereinbefore printed; see serial 509, pp. 326–30, 366–69). The Mexican Commissioners had very strict instructions to refrain from any discussions at the first meeting (*ibid.*, 325, 364). Trist's report of this meeting is in his despatch of August 29, as follows (D.S., 14 Despatches, Mexico, No. 14):

> At the first meeting our respective Powers were exhibited, and I remarked upon their (the Mexican Commissioners) being restricted to the mere receiving of my propositions for transmission to the President for his consideration: observing that my powers authorized me to confer only with persons having the like authority. Nevertheless, I would deliver to them the propositions I had to make, which had been put in the form of a treaty) in the expectation that when we met to discuss the subject their powers would correspond to mine. I determined upon this course because it was obvious that if the sight of our propositions was to have the effect of preventing them from proceeding in the negotiation, this could take place just as well after they had received their full powers as before. This was, therefore, a point of mere etiquette, and I sacrificed it to the substantial advantage of gaining time, and of pleasing the other party by not taking a stand against their mode of proceeding at the first step.

The account of the Mexican Commissioners of the meeting of August 27 is in their report dated September 7 (serial 509, pp. 383–84). From the translation (*ibid.*, 344–46), the relevant paragraph is excerpted:

> On the afternoon of the 27th August last, we met for the first time in the town of Atzcapotzalco. On the exchange of powers, we found those of Mr. Trist most ample to settle all existing differences between Mexico and the United States, to fix the limits of both countries, and adjust definitively a peace. Ours were restricted to receive the propositions of his Government, if they were reduced to writing; and, if made verbally, to reduce them to writing, with his approval. As Mr. Trist made some observations upon the limitation of our powers, we satisfied him by observing that when the time came to treat, we would present a complete authority. He immediately delivered to us the project of a treaty, which we that same night placed in the hands of the President. In conclusion, Mr. Trist proposed to us to select for the place of our future meeting a country house, of which he spoke, situated in the vicinity of Chapultepec, less distant from Tacubaya, where he resided, and from Mexico, where we were. We promised to take notice of the place designated, and adjourned to meet again the following day.

[1] The modifying instruction of July 19 was not received by Trist until September 27.

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The second conference (General Herrera being absent because of illness), which was held at the same place on August 28, was unimportant; the subject of discussion was the future place of meeting, and a residence about two miles from Tacubaya was agreed on. Trist thought that the third conference was to be held on Monday, August 30, but this was not the case (*ibid.* and despatch No. 14, of August 29, 1847, cited above).

Points of discussion to serve as a basis for the Mexican Commissioners had been drawn up on August 24 (serial 509, pp. 313–15, 355–56), but these were not very real and were laid aside. At a Cabinet meeting of Santa Anna and his ministers on August 29, fresh instructions were drafted, and the full powers of the Mexican Commissioners were extended under date of August 30 so as to authorize them to treat upon the contents of the propositions of Trist, "subject to the approval and ratification required by the Constitution"; but the Mexican Commissioners on August 31 declined to act under those instructions, which were thereupon amplified in general terms (*ibid.*, 330–35, 369–73).

The third and fourth conferences of the Commissioners were held on September 1 and 2. The Mexican Commissioners thus reported upon them (*ibid.*, 345, 383):

> On Wednesday we exhibited to him the full powers conferred upon us by the Supreme Government, and we entered into a long and calm discussion with Mr. Trist upon the capital points of the *projet*, which was continued all through the next day (Thursday). We have given to the Supreme Government the details. The point on which the negotiations then rested was this: Mr. Trist showed himself disposed to abandon his first pretensions upon Lower California and upon a part of the Upper, in order that Lower California might be able to communicate by land with Sonora. He then offered, if no other point of difference remained to conclude a peace than that relative to the territory between the Bravo and Nueces, he would consult his Government—not without hope of a good exit. This step would cost a delay of more than forty days in the negotiation. But the cession of New Mexico on our part was a condition from which he could not depart, not even to submit it to a new consultation in Washington, for he was fully certain that his Government considers it as a condition *sine qua non* of peace. The other points touched upon in the *projet* appeared to us reconcilable, if both parties should adopt terms of accommodation; such, at least, was the judgment we formed during the conferences.

Trist's report of the third and fourth conferences is contained in his despatch No. 15, of September 4, which includes a reasoned justification of the course that he took; while that despatch refers specifically only to the meeting of September 2, it is obvious that the proceedings of that and the previous day were together one discussion.

Trist first went to the limit of his instructions by yielding the demand for Lower California (there is no more than an incidental allusion to the proposed rights over the Isthmus of Tehuantepec; the subject seems to have been tacitly, though not formally, abandoned after the explanation made orally by the Mexican Commissioners, referring to the concession known as the Garay Grant; see serial 509, p. 337, and the "exposición" of the Mexican Commissioners dated

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March 1, 1848, in Tratados y convenciones concluidos y ratificados por la Republica Mexicana, 228–50, at p. 235; on the Garay Grant and its history, see Rippy, The United States and Mexico, 48–67, and Garber, The Gadsden Treaty, 41–63).

The line proposed by Trist was as written in the instruction of April 15, 1847, following the Disturnell Map in respect of the boundary between the two Californias; a Spanish version of that offer is quoted in Exposición, 234.

Not being able to reach agreement within the terms of his instructions, Trist went beyond them; he proposed that the Mexican Government should submit an offer of boundary, the important departures of which from Trist's authority were the leaving under Mexican sovereignty (but as "neutral ground" and not to be settled) of the region between the Nueces and the Rio Grande and the running of the line from the Colorado to the Pacific along the 33d parallel; this last was for the purpose of giving communication by land between Lower California and Sonora; Trist wrote (seemingly as an expression of his own view) that it "is perfectly obvious" that "the possession of the land communication makes no practical difference whatever"; but he gives no reason why the land communication between Lower California and Sonora should be extended so as to include San Diego; that port is not even mentioned. If such an offer as that put forward by Trist were formally made on behalf of Mexico, the armistice was to be extended for about six weeks, so as to permit reference of the offer to Washington. For the line of that proposed offer, see Paullin, *op. cit.*, plate 94A, with relevant text at page 65. The text of Trist's report here printed is from the duplicate of his despatch No. 15, the text of the proposed offer being therewith (D.S., 14 Despatches, Mexico; that duplicate was not received at Washington until November 18; the original, now lacking, not until October 21; see Polk's Diary, III, 196–97, and the instruction to Trist of October 25, 1847, quoted below):

The conference between the Mexican Commissioners & myself, on the 2d inst, resulted in my saying, that if they would submit to me a formal proposition paper, (Enclosure Nº 1.) I would transmit it to Washington, and would propose to Genl Scott to consent to the continuation of the armistice until the answer of our Government should be received: the calculation being, that this would require from forty to forty-five days, sending expresses both to Tampico & Vera Cruz. The idea had been thrown out by one of them (not without his being interrupted by the others, to remind him that their instructions did not in any way warrant any such proposition or intimation on their part, but just the reverse) that, provided I should agree to the other parts of a boundary nearly coinciding with the one above referred to, they might possibly obtain permission to relinquish New Mexico. This, he said, was the utmost possible extent to which they could go, in the way of sacrifice to the cause of peace; and supposing that they should succeed in obtaining the consent of the government to its being made, which was exceedingly doubtful, it would then remain more doubtful still whether the Government could maintain itself in a position so highly perilous with reference to the sentiment of the country, and affording so great advantage to those disposed to assail it, as well as to those who, independently of this motive, were banded together as opponents of all negotiation, ready to brand as a traitor every man who manifested a different sentiment. In a word, the practicability

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of carrying the thing through was problematical in the extreme. Nevertheless, the Government might possibly be induced to venture upon it. If, however we insisted upon more, the war must go on. Their reverses would probably continue. Well! if it must be so, it could not be helped; and at least we should have to content ourselves with possessing no other title to any of their territory, than that by conquest, in all its nakedness, and subject to all the odium & to all the insecurity that inseparably attach to it.

These remarks were made by Gen: Mora after I had quieted the objections of his associates, to his proceeding, by stating that every thing said by him or either of them would be regarded by me as a confidential expression of their individual views, and as merely an evidence of their own sincere & strong inclination to peace, unless the character of a formal proposition were expressly given to it by themselves. After this, he was allowed to proceed; and the conversation became very unreserved on the part of all, and was extended to considerable length. In the course of it, their concurrence in his suggestion, and in the convictions expressed by him, was manifested in ways which left no doubt on my mind, (indeed, it was already free from any) as to their being most sincerely disposed to go all practicable lengths, to restore peace; and also in regard to their being fully & conclusively satisfied, that they could venture no further; that it was the utmost possible extent to which the Government could go, with any hope of thereby advancing the cause. A single step beyond it, and this cause would inevitably be prejudiced; as could not but be the consequence of placing it upon grounds rendering the consummation of the measure impossible. This was, beyond doubt, their honest conviction. My own is, that it rests upon the most solid grounds; and that they were perfectly correct in saying, as one of them did, (and he was echoed by the rest, in tones & looks showing that they were most unaffectedly & anxiously impressed with the force & momentousness of the truth uttered by him,) "if we are to succeed in accomplishing a peace, herein does it lie": his finger, as he spoke, running over the territory comprehended between the Nueces & the Bravo, on the map before us.

My concurrence in this conviction is, as I have already stated, entire: I can see no reason whatever to hope for the possibility of any nearer approximation to our ultimatum; I believe that the alternative presented to us by the state of things in this country, actual and prospective,—supposing that a full and perfect knowledge of every fact and every circumstance pertinent to the subject were possessed at Washington—would be clearly seen to be, to accept this approximation or to relinquish for an indefinite period all idea of a treaty. At any rate, this is, beyond all doubt, the state of the case at the present moment; and knowing it to be so, although I deemed it in very highest degree improbable that our Government could assent to this modification of the boundary proposed by it, (and I so stated to the Commissioners) I made the offer above mentioned: this being the only course left me except that of announcing that their non-assent to the ultimatum prescribed to me put an end to the negotiation, and with it to the armistice; thus scattering to the winds all hopes of bringing the war to a close, by breaking up at its very inception the *peace-party*, a nucleus for which had been formed, from the moment that the Commissioners on the part of Mexico had been prevailed upon to accept the appointment; particularly Gen! Herrera and Señor Couto, (Gen! Mora, having long been a decided & *pronounced* friend to negotiation, even before the war commenced; whilst the fourth member, Señor Aristain, though respectable, is a man of far less note & weight) whose committal to the cause of pacification was a point of immense value: for, down to that moment, it was predicted by all Santa Anna's opponents, (among whom they both are, as highly distinguished members of the *moderado* party) and universally believed, that he would not be able to prevail on any but his own *creatures* to take upon themselves the responsibility of having any thing to do with the business.

I had, at the beginning of this conference, formally laid our ultimatum before them, so far as regards the line of boundary; remarking, as I handed them the paper, that they would find in it a confirmation of what I had said the day previous, respecting the slightness of the difference between the boundary proposed in the projet and that which I was bound to insist upon; whilst, on the other hand, it would make a great difference in the amount which I could offer in consideration of their acceding to that boundary. This amount I had not made known to

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them, because no suitable occasion had presented itself for so doing; and on the present, from the turn which the question took, I could not, without manifest indelicacy, and without the certainty of wounding & offending their national pride, bring forward, as being calculated to exercise a preponderating influence with them, a consideration which it was evident that they attached no sort of consequence to, as compared with others. This was a fact, of which I could not affect to be unconscious or forgetful, without danger of greatly impairing the confidence which I had, I believe, inspired in my plain dealing: for, not only was it perfectly apparent in all that had passed between us, but it was also made obvious by a collateral incident, to which they could not be supposed not to have become privy, and which was as follows: two days previously, at a very critical moment, in the confidential councils of Santa Anna of which I am kept as fully informed, for all useful purposes, as if I were present at them; as well those which are got up for effect, as those in which the secrets of his heart are laid bare, when the balance was trembling, and every reason existed to apprehend that the strongest friends of peace were about to abandon the cause, upon becoming apprised of our territorial demands, universally considered as extravagantly extortionate, I had, after advising with Gen! Scott, come to the determination at once to turn the scale if possible, by making known to Santa Anna, as I did through a confidential channel, that, in order to secure the boundary defined in the projet, together with the right of passage across the isthmus, I was authorized & willing to go as high as ———— (the highest sum named in my instructions), and that moreover, it could be put in a shape that would enable the Mexican Government to convert the entire amount into cash, without loss, & probably at a considerable premium, immediately upon the exchange of ratifications.

I was much encouraged by the effect produced by this intimation upon the person through whom I made it; whose expectations were evidently far exceeded by the amount named by me, (I had, on a previous occasion, told him that I might go as high as ———— the sum first named in my instructions; and *that* had evidently been very agreeable to him) and who, besides the very deep stake he has in the restoration of peace, in consequence of the influence it would have upon his business & affairs generally, had a very well grounded expectation that he would be profitably concerned in the management & disposal of the stock to be issued by our government under the treaty. But my hope was disappointed, the intimation was not attended with the desired effect. Straitened as the Government is for pecuniary means, and indispensable as it is, that it should obtain some money under the treaty, in order to sustain itself, the amount is not by any means, a primary consideration. The great object with those who have ventured to commit themselves by taking a stand as friends to peace, is, to reduce as low as possible the extent of territory which Mexico shall part with; and this is the first, great object with them, independently of what may be their individual convictions in regard to the importance of retaining this or that part of her territory: their chance for sustaining themselves, and carrying a treaty, will be in inverse ratio to the number of square miles parted with; and this, not arithmetical but geometrical ratio: for, there is a limit, beyond which there will be no such chance, no such possibility.

Under this general head comes, first of all & paramount to all, the retention of the country between the Nueces & the Bravo: the latter river being considered as the *boundary* proper, and that space of country as a *barrier* for its protection. This barrier, besides its importance in the military point of view, is regarded as indispensable to secure them against, 1st new difficulties between the two Governments, and new incroachments on our part; 2^{ndly} the utter destruction, by smugling along the whole extent of the Bravo, of their maritime commerce & of the revenue thence derived, to say nothing of the injury to their manufacturing interests. In a word, it is with them a *sine qua non*, which they *cannot* abandon, however disposed they might be to do so; and no treaty is to be hoped for, except upon this basis.

Next in importance to the retention of this barrier, comes that of New Mexico. Both honour & interest, they say, forbid them to surrender it. They could not, without ignominy "sell" a portion of the population of the country who have given such striking proofs of fidelity to the Republic, and of their determination to retain the character of Mexican Citizens. On the other hand, interest

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required them to hold on to that part of the Republic, as one of its main dependencies for meat to feed its inhabitants. Upon these grounds, set forth in considerable detail, rested the special objection to parting with new Mexico. They could, at the utmost, give us but a portion of it—the less peopled part: beginning the boundary line on the Pacific, at latitude 36° 30′, and running it due east until it passed Santa Fé; then down southward some distance, and again eastward, so as to strike the head of the Nueces.[1] To these objections I replied by pointing out the examples of Louisiana & Florida, in proof of the great enhancement in value, which the property of the citizens of New Mexico would experience; and which, if it was their pleasure to relinquish the quiet and safety secured to their country by the transfer, would enable them, with the proceeds of sale of their present possessions, to remove to the adjacent parts of Mexico, and there to acquire property of double, treble or quadruple the value now attached to the former. As to the supplies now drawn from the pastures of New Mexico, they would, under the influence of american enterprise & management, soon be afforded in greater abundance, of a better quality, and at a far less price; and this dependence (as they objected that it would be) of Mexico upon a foreign country, for a primary want, was altogether ideal & fallacious, since the reality of the matter would be, a mutual dependence of the two parties for a supply & for a market: a relation which could not fail to foster between the two countries, as far as its influences, direct & indirect, should reach, a spirit of good fellowship & an aversion to any falling out.

Finally, this second *sine qua non*—as it at first seemed likely to prove, and as it yet may turn out to be—was conditionally abandoned by the Commissioners, to the extent, *& in the sense*, stated at the commencement of this communication: that is to say, they agreed to lay my offer before their Government, for such new instructions as it might decide to give. In order to preclude mistake, the boundary contemplated in this offer, was written down by me: in the first instance, by commencing on the Pacific, as had been suggested by them; and afterwards by beginning on the Atlantic, because I found greater prolixity occasioned by the former starting point than by the latter. In tracing this boundary, two points will catch your attention: the first, that I have left out the Paso del Norte; the second, that I have left out part of Upper California. In regard to the first point, although I am convinced, as you are aware, of the importance of the Paso del Norte to us, or at any rate that it is very desirable to us to hold it; yet its importance did not seem to me sufficient to warrant the risk attendant upon the multiplication of the grounds of clamour against the treaty, which risk would have been incurred by running the line south of the Paso: for this would have been to "dismember a state"; that post being, so far as could be judged, within Chihuahua. With respect to the lower part of Alta California, the Commissioners had insisted upon the absolute necessity of their possessing an overland passage to Lower California; and although, they were, I believe, forcibly struck with the truth which I pointed out to them, that their possessing the lower part of the Colorado would inevitably give rise, in a very short time, to the old Mississippi question over again; yet, they are so completely mastered by the *need of the moment* (to part with the least possible amount of territory) that it outweighs every consideration, the force of which admits of being staved off. This, I believe, was the only reason for their catching up at once my remark, that my instructions did not require me to insist upon Lower California, and their setting down the abandonment of this part of our pretension as a settled point; regardless of the curtailment of the pecuniary compensation which I told them would necessarily result therefrom. In their hearts, they were convinced of the truth of what I said: (nay, it was expressly assented to) that no benefit whatever resulted to Mexico from the possession of Lower California, whereas she would derive great advantage from the influence exercised over her Sea-Coast opposite to the inner shore of that peninsula, by the flourishing commercial towns which would, in a very short time, spring up under the American flag. But, this conviction had no influence, nor could it be expected to have any influence, over the determination of minds preoccupied by the one overwhelming consideration to which I have adverted.

Their retention of Lower California being decided upon, it followed (so they said) as a matter of course, that they must reserve also a land-passage to that

[1] For this line, see Paullin, *op. cit.*, plate 94A, and text at p. 65.

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portion of their territory: though I believe that here also, their real motive was, to save appearances, more than any thing else, and to avoid exposing themselves and the treaty into which they might enter, to the clamour, that they had insulated Lower California, and by so doing had placed it at the mercy of our maritime power. That the possession of the land communication makes no practical difference whatever, under the existing circumstances & prospects of the two Countries, is perfectly obvious.

Among the points which came under discussion, was the exclusion of slavery from all territory which should pass from Mexico. In the course of their remarks on the subject, I was told, that if it were proposed to the People of the United States to part with a portion of their territory, in order that the *Inquisition* should be therein established, the proposal could not excite stronger feelings of abhorrence than those awakened in Mexico by the prospect of the introduction of Slavery in any territory parted with by her. Our conversation on this topic was perfectly frank, & no less friendly; and the more effective upon their minds, inasmuch as I was enabled to say with perfect sincerity, that, although their impressions respecting the practical fact of Slavery, as it existed in the United States, were, I had no doubt, entirely erroneous; yet, there was probably no difference between my individual views & sentiments on slavery, considered in itself, and those which they entertained. I concluded by assuring them, that the bare *mention* of the subject in any treaty to which the U.S. were a party was an absolute impossibility; that no President of the U.S. would dare to present any such treaty to the Senate; and that if it were in their power to offer me the whole territory described in our projet, increased ten fold in value, and, in addition to that, covered a foot thick all over with pure gold, upon the single condition that Slavery should be excluded therefrom, I could not entertain the offer for a moment, nor think even of communicating it to Washington. The matter ended in their being fully satisfied that this topic was one not to be touched, and it was dropped with good feeling on both sides.

In regard to all matters of subordinate consequence, I gave every proof which the nature of the subject permitted, of the strongest disposition on our part to spare their national pride, and to save their pecuniary interests. For instance, in regard to Artillery & the armament of the country generally, they proposed that their fortifications should be restored in the state in which they had been taken. This, I declined to accede to, saying that we had exercised, & would continue to exercise, the right universally recognized, to retain trophies. But, I added, this right would be exercised with moderation; and I related a conversation recently had between Gen! Scott & myself on this subject, which showed that his views & disposition in regard to it were liberal & generous in the extreme: extending even to the restoration of their *field* artillery, (with the exception of a very limited number of trophies) on the ground that he had no desire to strip the country of her means of defence, and wished, not only that peace should take place, but that it should be "a *healing* peace". They were evidently touched with this, and enquired if there would be any objection to the field artillery being included in the Stipulation: to which I replied that I could not engage to enter into such a Stipulation without the express consent of Gen! Scott, although I had no doubt that it would be cheerfully given. (and it was given, so soon as I informed him of the conversation).

In view of the extreme destitution of the Government, and the urgent need in which it will stand, now more than ever, of pecuniary resources, *to maintain itself*, should a treaty be negotiated; I offered, simultaneously with the *signature* of a treaty, to enter into an agreement, subject to the approval of the President, that their custom houses shall be restored to them forthwith, & that they shall have the entire management & controul of duties upon imports: this agreement, to embrace all duties upon previous importations, not actually collected at the time when the President's order shall be received at the respective ports. This offer had a most marked effect, not only as an evidence of the general disposition on our part towards them, but because of the importance of the pecuniary relief, of which it affords a promise. I beg leave to suggest, that the subject be taken into consideration as early as practicable; and that if my offer be approved, the order (modified so as to exempt our Army supplies from all duty or inspection) be be despatched at once, to come into effect upon a notification from me that a treaty has been

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signed. The influence of such an order, or its *fruits* rather, will be highly important towards procuring the ratification of a treaty; and, even if we should fail now, it cannot but prove a strong card in my hands, so long as any prospect whatever may exist of negotiating one.

Yesterday, a cabinet council was held, to which the Commissioners were summoned. They were invited to express their views upon my offer, and declined doing so, on the ground that they had come to receive instructions, and not to frame them. But, being pressed they declared themselves in favor of accepting. In this the Ministers generally concurred, except Pacheco, the Secretary of State, backed by General Tornel. Genl Tornel (a man notorious for rank cowardice & shameless venality) has recently acquired a good deal of influence over Santa Anna, (who has lost much of his former decision of character) obtruding himself, without a shadow of official right, upon the cabinet councils, and taking a most active part as an enemy of peace. On this occasion some scathing remarks were levelled at him & his confederate by Genl Mora, who, together with Herrera & Couto, are men of the highest standing for probity.

Should my offer be accepted, this will go by quadruplicate: two by Vera Cruz, and two by Tampico, under the security afforded by double passports

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[Enclosure 1]

The boundary line between the two Republics shall commence at a point in the Gulf of Mexico, three leagues from Land, opposite to the middle of the Southernmost inlet into Corpus Christi Bay; thence, through the middle of said inlet, & through the middle of said bay, to the middle of the mouth of the Rio Nueces; thence up the middle of said river to the Southernmost extremity of Yoke Lake or Laguna de las Yuntas, where the said river leaves the said Lake, after running through the same; thence by a line due west to the middle of the Rio Puerco, and thence up the middle of said river to the parallel of latitude six geographical miles north of the Fort at the Paso del Norte on the Rio Bravo; thence due west, along the said parallel, to the point where it interects the western boundary of New Mexico; thence northwardly along the said boundary, until it first intersects a branch of the river Gila; (or if it should not intersect any branch of that river, then to the point on the said boundary nearest to the first branch thereof, and from that point in a direct line to such branch) thence down the middle of said branch & of the said River Gila, until it empties into the Rio Colorado, and down or up the middle of the Colorado, as the case may require, to the thirty third parallel of latitude; and thence due west along the said parallel, into the Pacific Ocean. And it is hereby agreed and stipulated, that the territory comprehended between the Rio Bravo and the above defined Boundary, from its commencement in the Gulf of Mexico up to the point where it crosses the said Rio Bravo, shall for ever remain a neutral ground between the two Republics, & shall not be settled upon by the citizens of either; no person shall be allowed hereafter to settle or establish himself within the said territory for any purpose or under any pretext whatever; and all contraventions of this prohibition may be treated by the Government of either Republic in the way prescribed by its laws respecting persons establishing themselves in defiance of its authority, within its own proper & exclusive territory.

The final decision [1] of Santa Anna was to reject the proposals of Trist; the fifth and last meeting of the Commissioners, held on September 6, recorded the failure of the negotiations; Trist made no report of it until his despatch of September 27 (D.S., 14 Despatches, Mexico, No. 16), from which the following is excerpted:

On the 5th inst, I received a visit from the Secretary of the Mexican Commissioners, who came to make an appointment for a meeting at the usual place, on the following day. I was there at the hour named, (10 o'Clock) and officers were there

[1] For Trist's later comments on the course of Santa Anna, see serial 509, pp. 250–52.

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to receive me; but the Commissioners did not make their appearance until the hour of one. Apologies were not wanting on their part, but they were not needed by me; for I understood their position perfectly: the whole time since our last meeting had been employed in cabinet consultations & discussions, and they were now just from the last of these, to bring me the final result. Of the complexion of this, I could have judged from their looks, even if I had not previously been informed of what it was, in all likelihood, to be.

After an enquiry, (evidently made without any expectation on their part that it could be answered otherwise than by the negative which I gave) whether the question of the transfer of New Mexico could not be left to its inhabitants, they produced the rough draughts of two papers, which, after being read to me, were placed in the hands of clerks who had been brought out from the Secretary of State's office, to make copies for signature. Copies of these papers, and of my reply are herein enclosed, numbered from 1 to 3.

Two of the papers referred to by Trist are the note of the Mexican Commissioners of September 6 and the counterproject therewith, which would have left to Mexico all of Upper California south of 37° north latitude and all of New Mexico, as well as the region between the Rio Grande and the Nueces (serial 509, pp. 335–41, 375–80; see also the instructions of September 5, signed by Pacheco, in *ibid.*, 342–44, 373–75; the line of the counterproject is charted in Paullin, *op. cit.*, plate 94A, with relevant text at p. 65); in the Trist Papers (24:60340–52) are the original of the note of the Mexican Commissioners of September 6, the original of the counterproject (each marked by Trist as received on September 6 "late in the afternoon"), and a translation of the note, written by Thornton. The reply of Trist, dated September 7, is printed in serial 509, pp. 214–22; but that reply was not transmitted until October 20 (see *ibid.*, 212–13, and Trist's added "note" of October 28, pp. 222–26).

Termination of the armistice followed (see Scott to Santa Anna, September 6, 1847, and the latter to the former, of the same date, in *ibid.*, 346–48, 381–82); hostilities were at once resumed; and following the Battles of Molino del Rey (September 8) and Chapultepec (September 13), the American forces occupied Mexico City on September 14, 1847.

The Recall of Trist

The decision to recall Trist was reached at Washington by October 4 (Polk's Diary, III, 185); the record of the day following includes this paragraph (*ibid.*, 186):

The unofficial information received shows that Mexico has refused to treat for peace upon terms which the U.S. can accept; and it is now manifest that the war must be prosecuted with increased forces and increased energy. We must levy contributions and quarter on the enemy. This is part of the object of the letter to Gen'l Scott. Mr. Trist is recalled because his remaining longer with the army could not, probably, accomplish the objects of his mission, and because his remaining longer might, & probably would, impress the Mexican Government with the belief that the U.S. were so anxious for peace that they would ultimate[ly] conclude one upon the Mexican terms. Mexico must now first sue for peace, & when she does we will hear her propositions.

There was then available no report from Trist later than that of August 29 (cited above); his despatches of September 4 and 27 (cited

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above) were received at Washington on October 21 (*ibid.*, 196; and see the instruction of October 25, 1847, quoted below); the originals of those two despatches left Mexico City on September 28 "by the monthly British Courier" (see D.S., 14 Despatches, Mexico, No. 17, October 1, 1847); the information at hand regarding the negotiations which had followed the armistice was (almost certainly) derived exclusively from the printed pamphlet cited in the instruction of October 6, 1847, the text of which follows (D.S., 16 Instructions, Mexico, 75–79):

On the 2nd instant there was received at this Department from Vera Cruz, a printed document [1] in Spanish consisting of eight quarto pages and entitled "Contestaciones habidas entre el Supremo Gobierno Mexicano, el General en Gefe del ejercito Americano, y el Comisionado de los Estados Unidos." This purports to give a history, in detail of the origin, progress and unsuccessful termination of your negotiations with the Mexican Commissioners. The counter projet of the Mexican Government is indeed, under all the circumstances, a most extraordinary document. Its extravagance proves conclusively that they were insincere in appointing Commissioners to treat for peace, and that the armistice and subsequent negotiations were intended merely to gain time. They must have known that the Government of the United States never would surrender either the territory between the Nueces and the Rio Grande or New Mexico or any portion of Upper California; never would indemnify Mexican citizens for injuries they may have sustained by our troops in the prosecution of the present just and necessary war; and never could, without dishonor, suffer the Mexican Government to levy new duties on goods imported into ports now in our actual possession which had already paid duties to the United States. To propose such terms was a mere mockery. And here I ought to observe in justice to yourself, that we do not believe there is any truth in the assertion of the Mexican Commissioners that you had proposed, if the other terms of the Treaty were made satisfactory, to refer to your Government, "with some hope of a good result", the question of surrendering to Mexico that portion of the sovereign State of Texas between the Nueces and the Rio Grande, or any part of Upper California.

Your original instructions were framed in the spirit of forbearance and moderation. It was hoped that after the surrender of Vera Cruz and the Castle of San Juan d'Ulloa, the Mexican Government would be willing to listen to the counsels of peace. The terms, therefore, to which you were authorized to accede were of the most liberal character considering our just claims on Mexico and our success in the war. New Mexico, the Californias, several of the Northern States and most of the important ports of Mexico were then in our possession: and yet we were at that time willing freely to surrender most of these conquests and even to make an ample compensation for those which we retained. Circumstances have entirely changed since the date of your original instructions. A vast amount of treasure has since been expended, and what is of infinitely more value, the lives of a great number of our most valuable citizens have been sacrificed in the prosecution of the war.

In the annals of history never has there been a war conducted in the same manner by invading forces. Instead of levying military contributions for the support of our armies in the heart of the enemy's country, we have paid fair and even extravagant prices for all the supplies which we have received. We have not only held sacred the private property of the Mexicans, but on several occasions have fed their famishing soldiers and bound up their wounds. And what has been the return? Treachery and cruelty have done their worst against us. Our citizens have been murdered and their dead bodies mutilated in cold

[1] A copy of that pamphlet of thirty-six pages, with notations by Trist, is in D.S., 14 Despatches, Mexico, following No. 17, of October 1, 1847, and marked as an enclosure to No. 16, of September 27, 1847; the pamphlet is reprinted in serial 509, pp. 349–84, with a translation at pp. 307–48.

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blood by bands of savage and cowardly guerrillas, and, the parol of honor, sacred in all civilized warfare, has been habitually forfeited by Mexican officers and soldiers. Those paroled at Vera Cruz have fought against us at Cerro Gordo; and those paroled at Cerro Gordo have doubtless been in the ranks of the enemy in the battles so glorious to our arms at and near the City of Mexico.

After the battle of Cerro Gordo, the President entertained serious thoughts of modifying your instructions at least so far as greatly to reduce the maximum sums which you were authorized to pay for portions of the Mexican territory; but wishing to afford to the world an example of continued moderation and forbearance in the midst of victory, he suffered them to remain unchanged. And what has been the consequence? After a series of brilliant victories, when our troops were at the gates of the capital and it was completely in our power, the Mexican Government have not only rejected your liberal offers, but have insulted our country by proposing terms the acceptance of which would degrade us in the eyes of the world and be justly condemned by the whole American people. They must attribute our liberality to fear, or they must take courage from our supposed political divisions. Some such cause is necessary to account for their strange infatuation.

In this state of affairs, the President, believing that your continued presence with the army can be productive of no good, but may do much harm by encouraging the delusive hopes and false impressions of the Mexicans, has directed me to recall you from your mission and to instruct you to return to the United States by the first safe opportunity. He has determined not to make another offer to treat with the Mexican Government, though he will be always ready to receive and consider their proposals. They must now first sue for peace. What terms the President may be willing to grant them will depend upon the future events of the war and the amount of the precious blood of our fellow citizens and the treasure which shall in the meantime have been expended.

Should the Mexican Government desire hereafter to open negotiations or to propose terms of peace, their overtures will be immediately transmitted to Washington by the commanding General, where they will receive the prompt consideration of the President.

Should you have concluded a Treaty before this despatch shall reach you, which is not anticipated, you will bring this Treaty with you to the United States for the consideration of the President; but should you, upon its arrival, be actually engaged in negotiations with Mexican Commissioners, these must be immediately suspended, but you will inform them that the terms which they may have proposed or shall propose, will be promptly submitted to the President on your return. You are not to delay your departure, however, awaiting the communication of any terms from these Commissioners for the purpose of bringing them to the United States.

On the same date a War Department order to General Scott laid down the new policy that the "burden of sustaining our forces in Mexico must be thrown, to the utmost extent, upon the people of that country", informed him of the sending of increased forces of "about 15,000", and included these passages (serial 509, pp. 138–40):

With this augmentation of strength it is hoped that you will be able to accomplish not only the objects before indicated, (should you deem them preferable to others,) but to carry on further aggressive operations; to achieve new conquests; to disperse the remaining army of the enemy in your vicinity, and prevent the organization of another. Left as you are to your own judgment as to your military operations, the fullest confidence is entertained that you will conduct them in the most effective way to bring about the main and ultimate object of the war: namely, to induce the rulers and people of Mexico to desire and consent to such terms of peace as we have a right to ask and expect.

The views of the government in relation to propositions and negotiations for concluding a peace, are disclosed in a despatch from the Department of State to Mr. Trist, a copy of which accompanies this communication. By it you will perceive that he is recalled. You will embrace a proper occasion to notify the Mexican authorities of this fact.

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Should they offer through you terms of accommodation, or propose to enter on negotiations, the President directs that such propositions be forwarded without delay to him; but it is not expected that your movements or measures for carrying on hostilities will be thereby relaxed, or in anywise changed.

Upon the receipt of Trist's despatches of September 4 and 27 (the latter with a postscript of September 28), the decision to recall him remained unchanged; Polk thus stated his views in his record for October 21, 1847 (Polk's Diary, III, 196–97):

By the Southern Mail this evening despatches were received from Mr. Trist from Mexico, of as late date as the 28th of Sept., giving an account of his negotiations with the Mexican Commissioners which had resulted in a failure to come to any agreement with them. Mr. Trist had exceeded his instructions, and had suggested terms to the Mexican commissioners which I could not have approved if they had agreed to them. I can never approve a Treaty or submit one to the Senate, which would dismember the State of Texas, and Mr. Trist's suggestion, if agreed to, would have done [this] by depriving that State of the country between the Nueces and the Rio Grande. Mr. Trist in other respects had in his conferences departed from his instructions and the simple duty with which he was charged, which was to submit and inforce the ultimatum of his Government. He had no right to depart from his instructions, and I disapprove his conduct in doing so. He proposed, it is true, if they agreed to his suggestions, to submit it to his Government before he would enter into a Treaty, but in this he has committed himself and embarrassed future negotiations. His course is much to be regretted.

When the despatches were read in Cabinet, the comment was more harsh, including the statement that Trist had "managed the negotiation very bunglingly and with no ability"; Buchanan was directed to prepare an instruction "expressing in strong terms my disapprobation, and to repeat his order of the 6th Instant for his immediate recal" (*ibid.*, 199–201); this instruction of censure followed on October 25 (D.S., 16 Instructions, Mexico, 79–83):

Your despatches, either in original or duplicate, to N° 16, inclusive, with the exception of N°s 5 & 8, have been received at this Department.

From your N° 15, of the 4th September, received on the 21st instant, it appears that you had offered to the Mexican Commissioners that if they would propose to you to establish the boundary between the two Republics by a line by which the United States would surrender that portion of the State of Texas between the Rio Grande and the Nueces, and also that portion of Upper California "South of the thirty third parallel of latitude between the Colorado and the Pacific Ocean, you would transmit such a proposition proceeding from them to Washington, and would propose to General Scott to continue the then existing armistice until you should receive the answer of your Government.

You will have learned from my despatch N° 5, of the 6th instant, that we did not believe there was any truth in the statement of the Mexican Commissioners that you had made such a proposal. As this fact is now placed beyond a doubt, the President has instructed me to express to you his profound regret that you should have gone so far beyond the carefully considered ultimatum to which you were limited by your instructions.

The State of Texas is in the exercise of peaceable and undisturbed jurisdiction over the country between the Nueces and the Rio Grande. She has made extensive grants of land within its limits, divided it into counties which have been represented in her Convention and Legislative assemblies; established Courts of Justice therein; and, in short, has exercised the same sovereign rights over it as over any other portion of her territory.

Congress, acting upon these incontestable facts, as well as upon the clear right of Texas to extend to the Rio Grande, in December, 1845, created a port of de-

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livery West of the Nueces at Corpus Christi, and in May, 1846, established Post Routes between those two rivers. This region also constitutes a part of one of the Congressional Districts of Texas, and its people are now represented in the Congress of the United States.

Under these circumstances, the President could not for a single moment entertain the question of surrendering that portion of Texas, even if this were practicable. But such is not the case. Considering the enterprizing and energetic character of the American people, it would be impossible to expel by force the inhabitants between the Nueces and the Rio Grande from their possessions and to convert this territory into a desert for the security of the Mexican frontier.

The President has, also, directed me to express his regret that you should have been willing to entertain the question of surrendering any portion of Upper California to Mexico. By running the division line from the Colorado to the Pacific, along the thirty third parallel of latitude, the bay and harbor of San Diego would be restored to the Mexican Republic. This port, being nearly five degrees further South, is for every commercial purpose of nearly equal importance to the United States with that of San Francisco. It was to secure to us the bay and harbor of San Diego beyond all question and to prevent the Mexican Government from hereafter contesting the correctness of the division line between Upper and Lower California as delineated on the map which you carried with you, that your original instructions directed that if you could not obtain Lower Cailfornia, the 4th article of the Projet should in terms fix this line as running "north of the parallel of 32° and South of San Miguel to the Pacific Ocean."

To have arrested our victorious army at the gates of the Capital for forty or fifty days, and thus to have afforded the Mexicans an opportunity to recover from their panic, to embody their scattered forces and to prepare for further resistance, in order that in the mean time you might refer such proposals to your Government would, in the President's opinion, have been truly unfortunate.

With these considerations in view, the President has directed me to reiterate your recall.

The date of the last despatch received at the War Department from General Scott, is the 4th June. The President is now becoming apprehensive that he may not receive despatches from him before the meeting of Congress.

I transmit herewith a copy in triplicate of my despatch Nº 5.[1]

With the instruction of October 25 Buchanan sent a brief letter to Trist saying that he was "extremely sorry to be obliged to write" that instruction and signing himself "Ever yr friend" (Trist Papers, 26 : 60618); and on October 27 Buchanan wrote another letter, which was forwarded by the British Legation in Washington, to be carried "by the British Courier from Vera Cruz to Mexico", as it was feared that all other means of communication might fail; therein the substance of the two instructions of October 6 and 25 was briefly stated; it was said that four copies of the earlier instruction had been sent by different channels, meaning, it seems, an original, duplicate, and triplicate by Veracruz, and a letter of October 24 (giving the gist of the instruction of October 6) sent by way of Tampico with despatches of the War Department (see *ibid.*, 60581–82); the letter of October 27 was not received by Trist until December 12, 1847 (*ibid.*, 60621).

Resumption of Negotiations

Subsequent to the occupation of Mexico City by the American forces (September 14), there was a period of partial disorganization of the Mexican Government, followed by more stable conditions. Santa Anna resigned as President on September 16; the duties of the

[1] The instruction of October 6, 1847, quoted above.

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Presidency were taken over by Manuel de la Peña y Peña, then senior judge of the Supreme Court of Justice, who appointed Luis de la Rosa Minister of Foreign Relations; the seat of government was fixed at Querétaro; a quorum of Congress assembled there early in November; on November 11 General Pedro María Anaya was elected President *ad interim* until January 8, 1848; Peña y Peña then became Minister of Foreign Relations (see D.S., 14 Despatches, Mexico, No. 16, September 27, to No. 21, November 27, 1847, *passim;* also Rives, *op. cit.*, II, 584–92; for a discussion by Trist of the constitutional difficulties which arose upon the resignation of Santa Anna, see serial 509, pp. 280–81).

On October 20 Trist sent to the Mexican Minister of Foreign Relations, Luis de la Rosa, his reply of September 7 to the Mexican Commissioners (cited above); the text of Trist's covering note appears not to have been received at the Department of State; but there is a copy in the Trist Papers (25 : 60568–69, October 20, 1847), from which this paragraph is excerpted:

> It will be recollected, that a few hours only intervened between the delivery of the note, to which the one now transmitted is a reply, and the renewal of hostilities. But for this, it would have been sent in immediately; and notwithstanding those hostilities, all delay in its transmission would have been avoided, by means of a special flag of truce, if the state in which the question of peace was placed by the last communication on the part of Mexico, had left any ground whatever for the hope, that aught proceeding from him could be attended with the effect of arresting the calamities of war. As yet, however, the Full Powers, which it would have been to him so great a happiness to use for this purpose, stand unrevoked; and so long as this shall be the case, he will continue anxiously to cherish the wish that they may not have been conferred in vain.

In his answering note of October 31 (original in *ibid.*, 26 : 60631–32, marked as received November 5) the Minister stated that in the course of a few days he would communicate the names of the Commissioners to be appointed to continue the negotiations, with "instructions for the previous adjustment of an armistice" (see serial 509, pp. 212–13, 227–28); this and subsequent correspondence was carried on through the medium of Thornton,[1] of the British Legation.

On November 16 Trist received the two instructions from Washington of October 6 and October 25 respectively (quoted above), recalling him from his mission; in acknowledging these in his despatch No. 21, of November 27, with some defense of his course, Trist stated that he had privately advised the leading men of the Mexican "peace party" of the instructions which he had received, and that for several days he had been implored to remain in the country, but that he had turned a deaf ear to those entreaties and was leaving early in December; his final paragraph was this (D.S., 14 Despatches, Mexico; printed in part in serial 509, pp. 228–30):

> I recommended to the peace men to send immediately through Genl Scott whatever propositions they may have to make, or to despatch one or more Commissioners with me. After full conversations on the subject, however, I became thoroughly

[1] Thornton was Chargé d'Affaires from October 19 to December 11, 1847. From the earlier date until April 18, 1850, Bankhead was absent on leave.

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satisfied of the impracticability of either plan: it would, to a certainty, have the effect of breaking them down. The only *possible* way in which a treaty can be made is, to have the work done on the spot: negotiation & ratification to take place at one dash. The complexion of the new Congress, which is to meet at Queretaro on the 8th of January, is highly favourable. This will be the last chance for a treaty. I would recommend, therefore, the immediate appointment of a Commissioner on our part.

By the date of that despatch (November 27) there had been further official correspondence, which was enclosed therewith, namely, the note of Peña y Peña of November 22 (D.S., 14 Despatches, Mexico, duplicate original bound following the enclosures to despatch No. 27) announcing the appointment of four [1] Commissioners on the part of Mexico and a draft copy of the reply of Trist of November 24, which gave formal notice of the revocation of his powers. The texts of those two notes follow, the former in translation and the latter from the original in the Trist Papers (26 : 60715–16):

[*Mr. Peña y Peña to Mr. Trist*]

[Translation]

QUERÉTARO, *November 22, 1847*

The undersigned, Minister of Foreign Relations of the Mexican Government, has the honor to address this note to His Excellency Mr. Nicholas Trist, Commissioner of the United States of the North, advising His Excellency that the Provisional Government of the President of the Supreme Court of Justice of Mexico having been terminated by the election of General Pedro María Anaya as President *ad interim* of the Republic, and the undersigned having been appointed by His Excellency to the office of this Ministry of Foreign Relations, the new President immediately took up the matter of acquainting himself with the latest replies exchanged between His Excellency Mr. Trist and this Ministry.

Seeing therein the ardent desire shown by His Excellency Mr. Trist to put an end to the calamities of the war which unhappily divides the two Republics and that the appointment of Commissioners to this end by Mexico was pending, as the President of the Supreme Court did not make such appointment because of the said provisional character of his Government, the President has decided to select again the same two gentlemen who had previously been appointed, Mr. Bernardo Couto and Mr. Miguel Atristain; and as Messrs. José Joaquin Herrera and Ignacio de Mora y Villamil could not continue on this mission, the former because of most serious illness and the latter because of his being given the Ministry of War, he has appointed, to replace the said two individuals, General Manuel Rincón and Mr. Luis Gonzaga Cuevas, to whom the corresponding communications have been made through the undersigned.

But, as these gentlemen are in different places in the Republic, although not very far from this city, they have been notified to come here immediately to receive the instructions concerning this commission, and on receipt of such instructions they will so advise His Excellency Mr. Trist, in order that, with the due requisites, the conferences which were left pending may be continued and result happily in an honorable and advantageous peace.

The undersigned sincerely joins His Excellency Mr. Trist in desiring that the powers conferred may not be useless or in vain, and so takes pleasure in offering to His Excellency the assurances of his very distinguished consideration.

MANUEL DE LA PEÑA Y PEÑA

His Excellency Mr. NICOLAS TRIST,
Commissioner of the Government of the United States of the North.

[1] One of these, General Manuel Rincón, did not serve.

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[*Mr. Trist to Mr. Peña y Peña*]

MEXICO, *Nov. 24. 1847.*

To His Excellency Dñ MANUEL DE LA PEÑA Y PEÑA,
Minister of Relations of the Mexican Government.

The Undersigned has the honour to acknowledge the receipt of the note, under date the 22d inst., of His Excellency, Dñ Manuel de la Peña y Peña, Minister of Relations of the Mexican Government, acquainting him of the appointment of the Commissioners therein named, to negotiate for the restoration of Peace. The Undersigned regrets to say in reply, that the Powers conferred upon him for that purpose have been revoked, and that, agreeably to the instructions received by him, he is under the necessity of returning without delay to the United States. At the same time, he has been instructed to say, that any communication from the Mexican Government, having for its object the opening of negotiations or the restoration of peace, will be immediately transmitted by the Commanding General of the United States forces in this Republic, to Washington, where it will receive the prompt consideration of the President.

The Undersigned still cherishes, therefore, the hope that the signature of the Treaty which has been reserved for an other hand than his, is destined to take place at an early day. In this hope, he tenders to His Excellency Dñ Manuel de la Peña y Peña, the assurance of his most distinguished consideration.

N. P. TRIST.

Ten days later Trist changed his mind; his decision to remain in Mexico and to negotiate and sign a treaty of peace, if possible, notwithstanding his lack of authority and his instructions to return to Washington, was reached on December 4;[1] it was communicated in a letter of that date to Thornton, from which the following is excerpted (D.S., 14 Despatches, Mexico, No. 22, December 6, 1847, enclosure; printed in serial 509, pp. 266–68):

I am now resolved, & committed, to carry home with me a Treaty of Peace, if the Mexican Government feel strong enough to venture upon making one, on the basis, as regards boundary, of the Projet originally presented by me, modified according to the memorandum which I subsequently gave to one of the Commissioners: that is to say, running up the middle of the Rio Bravo from its mouth to the thirty second degree of latitude, and thence along that parallel to the Pacific Ocean; with free access to and from the ocean, through the gulf of California, from & to our possessions.

If they feel able to make and carry through a treaty on this basis—it would be utterly idle to talk or to think for an instant of any other, & I cannot listen to a single word on the subject—let them say the word, & the treaty shall be made.

If they do not feel thus able, let them surrender at once to the Puros, & dismiss for ever all thought of a treaty; for it is the last chance that Mexico can have for one equally favourable to her, or indeed for one which any party in this country can accept. I am fully persuaded, that its terms would not, by any means, meet the views *now* entertained by my government. So decided is my belief on this point, that, even if I were clothed with discretionary powers to make *any* treaty *which I deemed compatible with those views*, I could not, consistently with this limitation, offer the terms I now propose; and I should not now make the offer, but for my clear & perfect conviction on these three points: *first*, that peace is still the desire of my government; *secondly*, that, if the present opportunity be not seized *at once*, all chance for making a treaty *at all* will be lost for an indefinite period, probably for ever; *thirdly*, that this is the utmost point to which the Mexican Government can, by any possibility venture.

[1] December 4 is the date given by Trist; but perhaps he was committed one or more days earlier (see Roa Bárcena, *op. cit.*, 589–90).

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A copy of that letter of December 4 was enclosed to the Secretary of State in Trist's despatch No. 22, of December 6, a communication of more than fifty pages. In that despatch Trist elaborated on the three points mentioned in his letter to Thornton and on a further point, namely, that the determination of his Government to withdraw the offer to negotiate had been taken under a misapprehension of the actual state of affairs in Mexico; and a portion of the paper was devoted to a defense of his previous course; except for the opening paragraph, which follows, the despatch is printed in serial 509, pp. 231–66:

> Referring to my previous despatches, in regard to the political state of this country, & to the enclosed copy of a confidential letter, under date the 4th instant, addressed by me to a friend at Queretaro, (Mr Thornton) to whose able & indefatigable cooperation in the discharge of the trust committed to me I have, from the very outset, been greatly indebted; I will here enter at greater length into the considerations by which I have been brought to a resolve so fraught with responsibility to myself; whilst, on the other hand, the circumstances under which it is taken are such as to leave the Government at perfect liberty to disavow my proceeding, should it be deemed disadvantageous to our country.

The decision of Trist to remain at Mexico City and sign a treaty, if he could, was heartily approved by General Scott (Memoirs, II, 576) and by Thornton in his letter to Trist of December 11, 1847 (Trist Papers, 27 : 60846–47).

The Presidential Message of December 7, 1847

The annual presidential message of December 7, 1847 (Richardson, IV, 532–64), dealt at length with relations with Mexico. The instructions given to Trist and the terms proposed by the United States were summarized, as were also the terms finally put forward by the Mexican Commissioners in the negotiations following the armistice. No mention was made of the course taken by Trist during those negotiations or of his recall. It was said that New Mexico and the Californias "should never be surrendered to Mexico" and that there was "no good reason why the civil jurisdiction and laws of the United States should not at once be extended over them"; but the fact (already generally known, following the negotiations of August–September) that the cession of Lower California had not been within the "ultimatum" of the instructions, was stated; the policies announced included the prosecution of the war "with increased energy and power in the vital parts of the enemy's country", the levying of "contributions in every form consistently with the laws of nations", and "encouragement and assurances of protection to the friends of peace in Mexico in the establishment and maintenance of a free republican government of their own choice, able and willing to conclude a peace which would be just to them and secure to us the indemnity we demand"; the text of the message was available at Mexico City by December 25 (D.S., 14 Despatches, Mexico, No. 25, December 29, 1847).

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INSTRUCTIONS TO THE MEXICAN COMMISSIONERS

Trist had been informed by a letter of Thornton of December 5 (received December 7), which recounted a conversation with General Mora y Villamil, that the Mexican Government "would be glad to have" peace "on the terms of your Project" (Trist Papers, 27 : 60836–37); the decision of Trist to disregard his recall, and also the terms on which he was willing to treat, became known almost immediately thereafter; there was obvious need of haste, in view of the irregular position of Trist; despite this, there was delay.

It was at first thought that the appointment of the Mexican Commissioners must be confirmed either by the Senate or by the Council of Government before they could act; the idea that it might be possible to obtain British interposition or perhaps a guaranty by Great Britain of the treaty of peace survived until it was laid to rest by the British Secretary of Legation, Percy W. Doyle,[1] who arrived at Mexico City on December 11 and produced a note on the subject of as late a date as October 7 from Viscount Palmerston, British Secretary of State for Foreign Affairs, to the Mexican Minister at London (see Rives, *op. cit.*, II, 598–602).

One formal step taken was the following note from Trist to Peña y Peña dated December 26, 1847 (Trist Papers, 27 : 60892). This note was written in substitution for Trist's note of November 24 (quoted above) announcing his recall. That note of November 24 was withdrawn and was returned; the original thereof is in the Trist Papers (26 : 60715–16):

MEXICO, *December 26. 1847.*

To His Excellency Dñ MANUEL DE LA PEÑA Y PEÑA,
Minister of Relations of the Mexican Government.

Referring to the note, under date the 22nd ultimo, addressed to him by His Excellency Señor de la Peña y Peña, acquainting him of the appointment by His Excellency the President *ad interim*, Dñ Pedro Maria Anaya, of the Commissioners therein named, and that the said Commissioners, being at various points of the Republic, had been summoned to Queretaro, in order that they might receive the instructions of the President, relative to the Treaty of Peace, for the negotiation of which they have been chosen: the Undersigned has the honour to inform H.E. Señor de la Peña y Peña, that he is ready to enter upon the negotiation, so soon as the Commissioners on the part of the Mexican Republic, having received their instructions and Full Powers, shall be prepared to meet him.

Trusting that no further delay will occur in reopening the negotiation; and praying most fervently, that it may, this time, speedily terminate by arresting, the calamities of war and laying the foundation for a friendship between the two nations which shall know no end; the Undersigned tenders to His Excellency Dñ Manuel de la Peña y Peña, the assurance of his most distinguished consideration.

N. P. TRIST

The instructions to the Mexican Commissioners were given at Querétaro on December 30, 1847, the date of their full powers. The following translation of the twenty-three primary articles of the instructions is from the text in Algunos documentos sobre el Tratado de Guadalupe, 106–14:

[1] Chargé d'Affaires in the absence of Bankhead.

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Instructions which, by decision and order of His Excellency the President ad interim of the Mexican Republic, Pedro María Anaya, and in accordance with the vote of its Ministers, are sent to its Commissioners at Mexico City, General of Division Manuel Rincón and Senators Bernardo Couto, Miguel Atristain, and Luis Gonzaga Cuevas, for the purpose of terminating the war now existing between our Republic and that of the United States by means of a treaty of peace to which the former Republic has again been invited by Mr. Trist, commissioned for the specific purpose by the Government of the latter.

1. The Commissioners shall endeavor to provide that the Army of the United States should retire to the north of the River Bravo and of the Gila, and, having evacuated all the rest of the Mexican Republic, the claims of those States shall be submitted to the decision of an American Congress composed of the representatives of the independent powers of America, and that the obligation be undertaken of standing and abiding by its decision.

2. That if they should not wish to submit the differences to the decision of that Congress, the Commissioners shall endeavor to submit them under the same terms to the arbitration of some friendly nation, being authorized to provide in the case covered by this article as well as in the case covered by the foregoing article, that until the decision is made the United States may keep, as it were in sequestration, the lands to the north of the rivers indicated in the foregoing article.

3. If the evacuation of the Republic cannot be effected by any one of the means proposed in the foregoing articles, an endeavor shall be made that in the settlement of boundaries they may be natural and in no case pass beyond the following description.

4. The dividing line between the two Republics shall begin in the Gulf of Mexico at a distance of three leagues from the land at a point opposite the mouth of the Rio Bravo del Norte. Thence it shall follow along the middle of the river to a point two leagues to the north of the town called Paso del Norte; thence it shall follow to the west a parallel up to the summit of the Sierra de los Mimbres, whence it shall follow along the same summit, northward, up to the height of the source of the Gila River or one of its branches nearest to the said Sierra; it shall continue along the middle of this branch or along the Gila River to its outlet into the Colorado, whence a parallel shall be drawn to the Pacific Ocean; if this parallel should cut the town of the port of San Diego, then it shall be understood that the boundary must be delimited at the latitude corresponding to two leagues north of the said town of San Diego. The vessels and citizens of the United States shall at all times have free and uninterrupted transit from its possessions and the said boundary line to the Pacific Ocean by way of the Gulf of California when such transit is effected precisely by way of the mouth of the Colorado River and by navigation through that river and the Gila River, the above-mentioned transit in no case being understood as being overland without the express knowledge of the Mexican Government. And although this is the greatest discretion allowed to the Commissioners, they must make every endeavor to diminish the loss and prevent the cession in any way of land belonging to any of the sovereign States of the Federation. An endeavor shall be made to the end that, whatever boundaries may be fixed, the said boundaries are guaranteed by some nation which is friendly and commands respect.

5. That the navigation of the rivers which may be fixed as a boundary shall be free and common to both countries without either one of them being allowed, without the consent of the other one, to construct works or do things that may impede wholly or in part the exercise of this right, even under the pretext of favoring new methods of navigation. Neither shall duties be collected on any grounds except in the case of disembarkation on one of the shores, not even on the ground of maintaining the navigability of the river, for, if some duties should be necessary or desirable, the two countries shall proceed by common agreement. This does not prejudice the territorial rights of the said countries.

6. An endeavor shall be made to the end that the lands ceded shall have the status of sovereign States or territories in the future, provided that it is not in conflict with the Constitution of the United States.

7. All churches, houses, and edifices dedicated to acts or exercises of the Catholic religion in territories formerly belonging to the Mexican Republic and

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which under Article 4 of this treaty remain in the future within the limits of the United States, shall continue to be dedicated to the said acts and exercises of the Catholic religion without any variation, and under special protection of the laws. The same shall be the case with movable or immovable property which within the said lands is dedicated to the maintenance of the Catholic religion or to the maintenance of schools, hospitals, and other establishments of charity or social welfare. Finally, the relations and communication of the Catholics now in the said territories with their respective ecclesiastical authorities shall be free, open, and without any obstacle, even though the said authorities have their residence within the boundaries assigned to the Mexican Republic in this treaty, as long as a new delimitation of ecclesiastical districts is not made in accordance with the laws of the Catholic Church.

8. Mexicans residing in territories belonging formerly to Mexico and which are now within the limits assigned to the United States can at any time move to the Mexican Republic, keeping in the said territories the possessions which they may have, or alienating them and transferring their value wherever they may see fit, without the United States being authorized on this account to demand from them any kind of tax, charge, or levy. If the persons in question prefer to stay in the places which they now inhabit, they may retain the title and the rights of Mexican citizens; or immediately acquire the title and rights of citizens of the United States if they so desire. In any case, however, they and their properties shall enjoy the most ample protection.

9. All concessions of lands made by Mexican authorities in places formerly belonging to the Republic and by this treaty placed for the future within the limits of the United States are valid and in effect and shall always be maintained and guarded by the Government of the said United States.

10. The indemnity which may be provided for shall be paid at Mexico City to the satisfaction of the Mexican Government, which may exclude all compensation due to a debt antecedent to this treaty or interest on such debt, whatever may be the origin thereof.

11. Furthermore, the Government of the United States shall obligate itself to assume and to satisfy in full all amounts which are due up to the present to claimants and whatever amounts may fall due in the future by reason of the claims already liquidated and adjudged against the Mexican Republic, in accordance with the agreements made between the two Republics on April 11, 1839, and January 30, 1843 [Documents 89 and 100], so that the Mexican Republic shall have absolutely nothing to pay in the future by reason of the said claims.

12. Also, the Government of the United States obligates itself to assume and to settle in full all claims of its citizens which have not yet been decided against the Mexican Republic, whatever may be the title or reason on which they are based or on which the said claims may be founded, so that before the date of the exchange of the ratifications of the present treaty the accounts of every kind which exist or which may be assumed to exist between the Mexican Government and the citizens of the United States may be settled definitively and forever.

13. In order that the Government of the United States may satisfy, pursuant to the foregoing article, the as yet unsettled claims of its citizens against the Mexican Republic, the latter consents to the establishment by the Government of the said United States of a court of commissioners, the decisions of which shall be definitive and conclusive, provided, however, that, in making a decision on the validity of any claim, the principles and rules which were established in Articles 1 and 5 of the unratified agreement signed at Mexico City on November 20, 1843 [D.S., Unperfected H2], are followed; and in no case shall a decision not in accordance with the rules referred to above be given in favor of any claim. If the court of commissioners should consider it necessary for the proper decision of any claim to have before it any books, registers, or documents held by the Mexican Government, the Government of the United States shall request them from the Mexican Government, and they shall be furnished either in the original or as authenticated for the purpose of transmittal to the said court, it being well understood that the Government of the United States shall make no request for the said books, registers, or documents before the facts which it is intended to prove by such books, registers, or documents have been specified in every case under oath or under solemn affirmation by the plaintiff in the claim.

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14. All prisoners of war taken by the two parties either on land or on the sea shall be immediately returned after the signature of the present treaty. It is further agreed that if there are now any Mexicans held captive in the power of any savage tribe within the boundaries which under Article 4 are to be assigned to the United States, the Government of the said United States shall demand their delivery and their restitution to liberty and to their homes in Mexico.

15. Immediately after the exchange of ratifications of this treaty, there shall be returned to the Mexican Republic all forts, lands, places, and possessions which may have been taken from it or occupied in the course of the present war, within the boundaries which are to be fixed for the said Republic in Article 4. Likewise, there shall be returned to it the artillery, equipment, and munitions which were in the castles and fortified places when the latter fell into the possession of the troops of the United States. With regard to the artillery taken from the said castles and fortified places, that held by the troops of the United States at the date of the signature of this treaty shall be returned to Mexico.

16. The Republic of the United States formally undertakes not to permit in the future the addition thereto of any district, territory, or place comprised within the boundaries that are indicated for the Mexican Republic by the present treaty. This formal undertaking has the character of a condition for the territorial cessions which Mexico now makes to the Republic of North America.

17. At the same time, an effort shall be made to the end that if some part of Mexican territory which is now transferred to the United States should be inhabited by barbarous tribes and the latter should be later expelled from the said lands, the Republic of the United States obligates itself to the effect that their expulsion be effected in such a manner as not to cause the said tribes thus expelled to pass over into Mexican territory; and that the United States should not protect directly or indirectly or in any manner whatever the incursions of such tribes across our frontiers; that neither the North American Government nor any one of its subjects, whoever they may be, shall purchase the articles which the barbarians may steal from our nationals; that they shall not provide them with arms, munitions, or other articles with which they may attack us; and, finally, that they shall in no way prevent our Republic or any one of its States or territories from using their right to settle their own lands, which may belong to them under any title, nor that they should secure and fortify their frontiers. In order to determine these points, our Commissioners shall bear in mind the protest which the Legislature of Chihuahua has just made, which is sent to them herewith for the purpose. Article 33 of the treaty of 1831 [Document 70], which is ratified in all its parts, shall be scrupulously carried out.

18. An endeavor shall be made to stipulate that if, at any time, there should be points on which the two nations cannot agree through the peaceful channel of negotiations, before attempting that of arms recourse shall be had to the arbitration of a friendly power. If, even in the future, the idea of a Congress of American powers can be promoted, the Government again recommends this idea.

19. An endeavor shall also be made to stipulate, for the case of war, articles similar to those of the treaty of 1785 between the United States and Prussia, which read literally:

[Here follow, in Spanish translation, from the treaty mentioned (Document 13), the clauses of Articles 23 and 24 thereof, except the concluding sentences of Article 23, beginning "And all merchant".]

20. An endeavor shall be made to stipulate that within the italicized words of Article 23 ["all others whose occupations are for the common subsistence and benefit of mankind"] there be expressly included the establishments of instruction, charity, and religion and, if possible, the judicial and municipal authorities and the property and dependents of all those referred to, so that the conqueror may not obtain other rights over all these things except those which belonged to the Government of the nation to which they belong according to its own laws.

21. The Commissioners shall endeavor to bring it about that as soon as the treaties are signed by them, the cities of Mexico, Puebla, Jalapa, Saltillo, Monterrey, and any other which the North American troops now occupy may be evacuated, the said troops being restricted to the cantonments which may be

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suitable to them; and also that, at the same time, the maritime customhouses be left free and the blockade of the ports be lifted.

22. It is urgently recommended to the Commissioners that they most firmly insist on preserving the territory between the River Bravo and the Nueces, with the understanding that the navigation of the Bravo can be granted to the United States under the most ample conditions if that country is interested in it.

23. Lastly, in case the Commissioners for any reason cannot bring about an honorable peace, they shall endeavor to regulate the war by the articles contained in this paragraph and other analogous paragraphs.

With the foregoing were two additional articles of instructions; by the first, the territory between the Rio Grande and the Nueces was not to be ceded unless the treaty could not otherwise be signed; by the second, the minimum of the indemnity was fixed at $30,000,000; there was also a secret article of instructions to the effect that the Mexican Government could receive such indemnity in bonds of the English debt "of those last converted", up to 10 percent more than their real average value on the London market during the last six months (Carreño, Mexico y los Estados Unidos de America, 224–25; Roa Bárcena, *op. cit.*, 597).

Reports of Trist on the Final Negotiations

Trist's despatches (after No. 22, of December 6, 1847) prior to that of January 25, 1848 (No. 27), include very little about the negotiations that followed his decision to remain at Mexico City (see D.S., 14 Despatches, Mexico, No. 23, December 20, 1847, to No. 26, January 12, 1848, inclusive; printed in serial 509, pp. 268–80); on December 29 (No. 25) he told of the discouraging effect of the presidential message of December 7 but thought that there was every probability that a treaty would be signed in the course of a week; on January 12, 1848, he wrote (No. 26):

Tomorrow, I am to have a meeting with the Mexican Commissioners, at which, every thing will, I believe, be agreed upon between us: &, allowing a day for making out the papers to be transmitted to Queretaro, & five or six for the return of the courier, from the time of his departure hence, the signing of the Treaty will probably take place towards the close of next week [January 22].

The Boundary (which has been agreed upon, subject to the approval of the Executive at Queretaro) will be the one defined in the Projet which I brought out, with a slight variation at its western extremity. The reasons which have governed me in this, as well as in not insisting (as I had at first determined to do) upon the parallel of 32°, from the Rio Bravo, will be fully explained hereafter: time not permitting me to do so now.

. . . . . .

The Mexican Commissioners endeavoured, at the outset, & as a preliminary condition to their entering upon the negotiation, to obtain a promise that such suspension of hostilities should take place, *upon the signing of the treaty;* &,—independently of the general & obvious reasons, supplied by the common sentiment of humanity, against war going on, after a treaty of peace has been signed, in the very midst of the forces engaged in it,—they gave special reasons, reasons of policy, connected with the position of the Government, as being the Government of the Peace party, for wishing that this Government may not be placed in the alternative of resisting the further advance of our troops, or affording grounds for the changes which a contrary course would justify, even to the extent of that of treasonable connivance. But, all I could say in reply was, "General Scott is totally without discretion on the subject. His instructions are, to push the war

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with all possible vigour, & to occupy the country as speedily as his means permit. He cannot enter into any agreement of the sort,—not even if we sign the treaty—without disobeying orders. But, let us get it ready for signature; & then, I will lay it before him, stating that its being signed depends upon his engaging to suspend further movements, until he can receive instructions from Washington."

By January 25 the negotiators had reached an agreement which was complete in substance, although even then the drafting of certain articles had not been finished; and the approval of the Mexican Government of certain major features of the treaty was still lacking. Trist's despatch of that date [1] opens with the following paragraph (D.S., 14 Despatches, Mexico, No. 27; printed in serial 509, pp. 280–94):

The Treaty agreed upon between myself and the Mexican Plenipotentiaries will, according to every probability, be signed immediately upon the return of an express which has just been despatched to Queretaro. Every arrangement has been made here and upon the road between this and Vera Cruz, and a confidential order has gone forward to Gen! Twiggs at that place, for its instant departure hence, and to ensure its rapid transmission to and from Vera Cruz. Although closely engaged in the preparation of the copies (Quintuplicate) for signature, I shall find some intervals of time for writing this by snatches.

After a brief statement regarding the full powers of the Mexican Commissioners and some pages on other topics, the despatch mentioned has the following description of the treaty and its negotiation:

I will now enter upon the subject of the Treaty itself. The negociation has been an exceedingly laborious one, and has occupied me, without intermission for several weeks, during as many hours of every twenty-four as could possibly be given by me to work; and at no other period of my life, so strong has my health become, could I have undergone the same amount of labour.

Independently of the desirableness, that the treaty should be a good one, the very peculiar posture of affairs in this Country required that it should be such as to *protect itself* against the tempest of objections, ready gathered to burst upon it, as the last resource for overwhelming and upturning the Government, in order that the object may be accomplished of compelling our Country into an amalgamation with this, by rendering peace impossible in any other way. In order that it might so protect itself, it was requisite, not merely that the Treaty should present the fewest possible features that could be objected to, but that it should, with reference to the fears, the suspicions and even the prejudices of the Mexican people, carry upon its face as many positive recommendations as the nature of the subjects stipulated upon rendered practicable.

The plan upon which I proceeded, to arrive at such a result was, in the first place, to request the Mexican Commissioners to take the Projet of the United States as a basis, and to suggest such modifications as might seem to them desirable. The result of this request was, an entire new draught from them; in which but very little of our Projet was retained, and in which I found very little that could be acceded to, at least without material changes, either as to substance or as to form. It answered, however, as a basis for me to work upon, in preparing substitutes for the articles contained in their draught: governing myself by our Projet, by my instructions, and where these did not touch the subject, by the Treaties which have been entered into by our Country. Where these resources all failed, I had to rely upon such knowledge as I possess of her

[1] This despatch was sent from Mexico City on February 9 and was received at Washington on February 28; with it were the second originals of the treaty and additional and secret article; of its three stated enclosures, only "C" was then transmitted; "A" was forwarded somewhat later; and "B" seems to have been planned but not written.

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principles and policy, with respect to the various topics that presented themselves. My substitutes led to discussions, in which I had to explain why that which had been proposed by them was inadmissable, wherein consisted the difference between it and the proposed substitute, and why this presented the only way, and the only degree, in which the object could be attained. In this manner, modifications and remodifications succeeded each other, with reference to every topic which the Treaty contains; until finally its various stipulations were agreed upon, both as to substance and as to form. As this was done, the Articles were written anew by me, translated by one of the Commissioners; (Señor Cuevas, who reads English very well, although he does not speak it or understand it when spoken) and then, the phraseology changed, in one or the other version, or in both: so that the idiom of both languages might be preserved, whilst at the same time the Treaty should present in both a correspondence of expression as well as a perfect identity of sense. In this I had to indulge the gentlemen on the other side, (whose language is more peremptory than ours, in its requirements for a correct style) by allowing them to put into what they considered idiometic spanish, the meaning of the articles draughted by me, varying the structure as far as they deemed necessary; and then myself writing the articles over again in English, so as to make them conform to the Spanish. As the result of this labour, the Treaty, whilst it is both english and spanish, and not, on either side, a mere literal translation from the other, will be found to exhibit a correspondence in the two languages, which is by no means common in those which have come under my examination.

Some things which were proposed and strongly insisted upon, on the part of the Mexican Government, were of a nature to admit of nothing but a positive refusal. Among these were the distinct proposals, that the Treaty should be made under the guaranty of neutral powers; and that it should stipulate absolutely for the submission of all future differences to arbitration. The stipulation on the latter subject, as modified by me, will be found in Article 21. In that shape, whilst it serves to strengthen the Treaty in this Country, it can do no harm, but may do good, as a formal recognition of the general expediency and duty of using every endeavour to settle differences otherwise than by a resort to the *ultima ratio*. Besides the two proposals just stated, the negociation commenced with one, to enter into a Convention which, leaving us in possession of the territory comprehended within our proposed boundary, should submit the whole question between the two Countries to arbitration.

The *Boundary* [Article 5] is the one defined in the Projet, with a slight variation at its western extremity: an explanation on which point will be found in the accompanying paper marked A [printed elsewhere in these editorial notes]. The one marked B. [lacking and seemingly not written], relates to the parallel of 32°, as a boundary. Upon entering on the negociation, I had, in pursuance of the views presented in your Despatch of the 19th July, determined to insist upon that parallel, from the Rio Bravo across to the Pacific, as a *sine qua non*. Although there told that it was not then intended that I should do so, I presumed that the dispositions entertained by the President at the present time required that I should do so now. But, in forming the determination to insist upon this line, I had not adverted to the fact, that it constituted an insuperable obstacle to the negociation of a Treaty, no matter what its terms might be in other respects. This was the case, even if the difference, between the territory which that line would give us and that comprehended in the boundary of the Projet, should be ever so inconsiderable. It mattered not whether it was ten miles or ten feet in width, the effect would be all the same: to render a treaty impracticable.

The States of Sonora and Chihuahua, which adjoin New Mexico, had solemnly protested against the transfer of a single foot of their territory, and against the validity of any such transfer, if made. This was, therefore, a *sine qua non* with the Mexican Government; and one which it was absolutely impossible that it should depart from, even if it was ever so strongly disposed to do so: because it would have rendered the ratification of the Treaty an impossible thing. Not only would the delegations of those States have opposed it, but it could not have obtained a single vote in its favour. If there be in this Country one sentiment more universal and decided than any other (and this, with especial reference

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to our Country, and the design imputed to her) it is the one which denies the possibility of a valid transfer by the General Government, of any portion of the territory of one of the Sovereign States. The argument on this subject is unanswerable. It is set forth with great clearness by the Puros (or war-until-annexation party) in the Manifesto referred to in my Despatch of the 26th December, as constituting "the last stand made by them, in the character of members of the expiring Constituent Congress, against the consummation of the measure, (a Treaty of Peace) upon which the Government is known to them, and to every one, to be intent". Nor does it avail to urge against this denial of authority in the Genl Government, *the supreme law of necessity:* for it is fortified at this point also. It says, If the Union, after having exhausted all its means in the defence of its members, finds itself incapable, in regard to any one or more, of protecting them; in such case, let the portion of the Republic, with respect to which the impossibility of defence exists, be *abandoned* for the time. But, this inability gives no right to the Union to *alienate* any portion of any State; whether it be for the purpose of purchasing peace for the rest, or any purpose whatever. No such alienation can be valid.

Thus insurmountable was the obstacle to the adoption of the parallel of 32° as the boundary. The only particular, in respect to which it was practicable to overstep, this limitation to the transfer of territory, is the small portion of the State of Tamaulipas, lying north of Rio Bravo, and running a short distance up that river: which strip of country (extending either to the Nueces or as far as the San Antonio—I do not recollect which, and have not the references at hand) just as certainly constituted a part of that State, and not of Texas, at the time when the latter declared her independence, as it is certain that the Counties of Accomack and Northampton do now constitute a part of the State of Virginia, and not of Maryland. Tamaulipas, however, has not made any protest on the subject; and it is believed that the boundary will be silently acquiesced in by her, and that, in view of the extreme peculiarity of the case under every aspect, this departure from the principle will not be made a point of by those in favour of peace.

The declaration with which the Article on the boundary concludes, was a *sine qua non* on the part of the Mexican Government. I entertain no doubt whatever of its great importance in respect to the ratification of the Treaty; and my mind is far from being satisfied—such is the state of the public mind on this point—that the ratification would have been practicable without the aid which it gives. It was proposed, that it should form an Article apart, in terms that were inadmissible. In its present form and place, it is the result of repeated conversations, and was offered by myself: after which, several modifications of phraseology were proposed from the other side; a part of which were acceded to, and the rest not.

The *Indemnity*, or amount to be paid by the United States, is Five millions less than the sum I was authorised by my instructions to pay for the same Boundary, and which a compliance with those instructions would have required me to agree to pay, if necessary to secure that boundary, had a treaty been made in September last; or indeed, at any time prior to the receipt of the counter-instructions, which (the *triplicate* thereof) first came to hand on the 16th of November, as the Department was advised at the time. Taking into consideration, on the one hand, the time when the offer of Twenty millions for the same boundary was made by the United States, (not formally or upon paper, but by an intimation from me, which was just as binding) and the period during which that offer had remained in force; and on the other hand, the contents of the Despatches received by me in November, and those of the President's message, as regards the encreased expenditure of blood and treasure attending the prosecution of the war, in connection with the continued disposition of our Government not to exact more than a fair compensation for that expenditure: taking all these things into consideration, and taking also those twenty millions as the standard for my government, in estimating the deduction which should be made from it, to bring the sum into accordance with those views, I have deemed it my duty to strike off five millions and, at the same time not to reduce the sum any lower. I made the offer of the Fifteen millions, at once, announcing that it was the highest point to which I could go. I was not at the time aware that the Mexican Pleni-

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potentiaries had had their hands tied against accepting anything less than thirty millions. This was the case, however; and it has continued to be the case down to this moment. The copies of the Treaty for signature, now being made, must stop at the 12th Article, until the Government at Queretaro shall have consented to accept the fifteen millions, upon learning that I have remained inflexible upon that point, even at the risk of the Treaty being lost, and shall have made its election as to the mode of payment.

With regard to the *Discharge and Assumption* of claims, explanations will be found in the accompanying paper, marked C [for those lengthy "explanations" of Articles 13 to 15, see serial 509, pp. 294–301; the print omits two sentences of the quoted statement by Couto].

The condition of the inhabitants of the ceded or transferred territory is the topic upon which most time has been expended, in the modes stated at the commencement of these remarks. It constituted a subject upon which it was all-important that the Treaty should be guarded at all points, and should recommend itself as strongly as possible. Every thing proposed on the other side in regard to it was inadmissable or objectionable, in substance or form; and the Articles, as they now stand [Articles 8 and 9; the latter was recast in the Senate], are the result of draughts prepared by myself, and were repeatedly amplified and otherwise altered, to meet the wishes of the Mexican Commissioners. The stipulations regarding the incorporation of the inhabitants into our Union were restricted to the *Mexican* inhabitants, because, as the Mexican Commissioners stated, their Government has no right to enter into such stipulations in regard to the foreigners who may be residing in the transferred territory. The right of Mexicans residing there, to continue there, retaining the character of Mexican citizens, would follow, as a necessary consequence, from the right secured to such Citizens by the Treaty of Commerce, to *go* and reside there. On this point, and for the right secured to such citizens, resident or non resident, to retain the landed property they may now own there, a precedent was afforded by our British Treaty of 1794. (Articles 2 and 9 [of Document 16]). The liberty to "grant, sell or devise the same to *whom they please*", I qualified by restricting the right of purchase to *Mexicans*. This stipulation is particularly important to landholders on the Rio Bravo, and especially so, to the Citizens of Tamaulipas, the estates of some of whom, situated south of the Bravo, are dependent in some respects for their value, upon lands on the north of that river, which are used as pastures.

With respect to grants of land made by the Mexican authorities, the *proviso* contained in my instructions was strenuously objected to, upon a point of national honour and decorum. No such grants had been made since the 13th May 1846. This they knew; and consequently the proviso could have no practical effect. But it implied that they have been made, or might have been made, and that nevertheless the Government committed the injustice of revoking them; which, in fact, it had authority to do. Moreover, it involved an acknowledgement, that, from the day when hostilities broke out on the north of the Rio Bravo, the Mexican Government had lost the right to make grants of land in any part of its territory subsequently occupied by us. Feeling the force of these objections, I requested them to make sure of the fact stated by them; and, also, in regard to no grants having been made in Texas since the revolution, which had been incidentally mentioned by one of them. And this having been done, in a manner which left no shade of doubt on their minds, the declaration which will be found at the end of Article 10, was agreed upon in lieu of the *proviso* [Article 10 was deleted].

The stipulation respecting grantees who had been prevented from fulfilling the Conditions of their grants, was taken from the Florida Treaty:[1] that precedent being modified to meet the necessity of distinguishing between lands in Texas

[1] Cf. the first paragraph of Article 10 of the signed treaty with Article 8 of the treaty with Spain of February 22, 1819 (Document 41); Trist had no instructions to treat regarding land grants in Texas; it seems that he was not informed on the subject; and the clauses regarding such grants that were written in the treaty were naturally and properly regarded as impossible by both President Polk and the Senate.

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and those situated elsewhere, and of respecting her authority over the subject. This did not permit the declaration that the grants within their limits shall be null & void; as she might have seen fit, or might see fit hereafter, to adopt a different determination. Nor did it permit the declaration, that they shall not be obligatory upon her, (as I had at first written it) except with the qualification, "in virtue of the stipulations contained in this article". On the other hand, the right of the United States to stipulate with Mexico, in regard to grants of land in Texas, seemed to me, beyond the possibility of question, to be involved in the transfer from Texas to the United States, of the authority to make a Treaty of peace between her and Mexico.

The stipulations respecting the Indians inhabiting the transferred territory [Article 11], independently of their justice, were indispensable to make the Treaty acceptable to the northern states, or to any who take the proper interest in their security: in a word, to any one who has the feelings of a Mexican Citizen, or the least respect for the obligations which a Federal Union imposes. Excepting only the specific prohibition [which was deleted] against supplying the Indians with firearms and ammunition, (if, indeed, this can justly be deemed an exception) those stipulations contain nothing which is not expressed or plainly implied in the Treaty of Amity, Commerce and Navigation (Article 31 [33 of Document 70]) which is revived in the present Treaty of Peace. But, to make the Article what it must be to satisfy the public mind of this country, it was necessary that those implied obligations should be set forth in detail, and expressed in the most unequivocal manner. Upon examining the old Treaty, I found that it imposes absolutely, & without any saving or qualification whatever, as to the practicability of the thing, the obligation "to *restrain*" by force *all* hostilities and invasions" and, "not to *suffer* their Indians to *attack;*" and also, in regard to captives made by Indians, "to return them to their Country, as soon as they know of their being within their respective territories". I found also, that the last sentence is so worded as to restrict the prohibition against the purchase of captives, in a manner which could not possibly have been intended. In the new Treaty the obligations above referred to are expressed with the qualifications demanded by the nature of the subject, in order that they may have the character of a practical law, agreed upon and established, upon serious consideration of its requirements, and in the *bona fide* intention that these shall be fulfilled: an intention which stands exposed to serious doubt, when engagements entered into "in the most solemn manner", are found expressed in a manner so loose, that their exact fulfilment, as expressed, involves impossibilities.

The stipulations [Articles 19 and 20] concerning merchandise imported into the Country during our occupation of its ports, required to be put into their present form, in order that they might not have the effect of placing such merchandise, with respect to its introduction into places not occupied by our troops, on a *better* footing than if imported in time of peace: which, even if it could have been demanded consistently with justice, was, in a practical point of view, impossible by reason of its incompatibility with the execution of the State and Municipal laws regarding this subject. To discriminate, in this regard, between merchandise imported through ports occupied by us, and other merchandise, would have been practicably impossible, owing to the temptation and facilities it would have afforded to frauds, and the endless controversies, complaints and claims to which it would have given rise. For the same reason, the right to reship was restricted to goods *in the ports:* otherwise, it would have put it in the power of any one, under the pretext of going to a port of reshipment, to traverse the Republic with goods, passing through whatever places he pleased, and dropping them on the way.

The last article [Article 22], is founded on one [Articles 23 and 24 of Document 13] contained in our Treaty with Prussia, of 1785, (which bears the signatures of Benjamin Franklin, Thomas Jefferson, and John Adams). In the first draught presented by the Mexican Commissioners, the Article had been copied from the Prussian Treaty. After making in it such modifications as seemed to me desirable, it was agreed upon in that shape.

The preamble also, after a few modifications, was adopted from the draught of the Mexican Commissioners.

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The Final Discussions

There is abundant material on the final negotiations, apart from the despatches of Trist; his papers in the Library of Congress are illuminating; there are valuable accounts in Rives, *op. cit.*, II, 598–613, and in Smith, *op. cit.*, II, 233–40, 462–68 (of those two authors, only the latter examined the Trist Papers); an important official paper is the "exposición" of the Mexican Plenipotentiaries dated March 1, 1848 (Tratados y convenciones concluidos y ratificados por la Republica Mexicana, 228–50; that paper is hereinafter cited as "Exposición"); the work of Roa Bárcena, published in 1883 (Recuerdos de la invasion norte-americana, ch. 34), is of real interest; that writer had available the papers of Bernardo Couto, one of the Mexican Plenipotentiaries.

Throughout the proceedings of January 1848, Doyle, of the British Legation, was in close touch with the negotiation; Thornton constantly aided Trist as translator and as scrivener; he translated and wrote in English the articles of the Mexican proposals (Trist Papers, 28: 61092–95, 61088–89); on January 20 he wrote to Trist asking for "more to do" (*ibid.*, 61172; see also 61170); of the three signed originals of the treaty which are now in Washington, two are partly, and one wholly, in his hand.

The duties of secretary to the Mexican Commissioners were performed by Alejandro Arango y Escandon, a friend of Couto (Roa Bárcena, *op. cit.*, 597, footnote 2).

Various drafts of Trist antedate the first official conference; one (Trist Papers, 27:60913–19) contained a preamble and two additional articles relating to Tehuantepec; this was given to Ewen Clark Mackintosh,[1] the British consul and a prominent banker of Mexico City, on December 21, 1847, but the subject was not pressed; another, written January 1, 1848, contained a preamble and three secret articles in guaranty of the Constitution of Mexico (*ibid.*, 61005–6), but this was subsequently declined (on those two points, see Smith, *op. cit.*, II, 466); and by the same date Trist had written drafts (Trist Papers, 27:60921, 61004) of clauses regarding Indians (Article 11 of the treaty) based on Article 33 of the treaty of 1831 (Document 70).

During the negotiations, Trist was guided by his interpretation of the instructions given to him regarding treaty terms and, on subjects not thereby covered, by previous treaties and general principles; as between Trist's instructions, as he read them, and those of the Mexican Commissioners, the points of essential difference were the boundary and the amount of compensation to be paid by the United States.

The opening official conference had by the Mexican Commissioners with Trist was held at Mexico City (the place of all their meetings prior to the signing of the treaty) on Sunday, January 2, 1848; but the discussions of that day were limited to suggestions which Trist was not expected to entertain, such as an armistice antecedent to a

[1] As to the interest of Mackintosh in the Tehuantepec concession known as the Garay Grant, see Rippy, The United States and Mexico, 48 *sqq.*

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treaty and arbitration (Trist Papers, 27:61009, minute of the first conference; Roa Bárcena, *op. cit.*, 597).

Six days later, the Mexican administration again changed; the term of General Anaya as President *ad interim* expired on January 8; as there was no quorum of Congress assembled, the duties of the Presidency again devolved upon Peña y Peña; and Luis de la Rosa became once more Minister of Foreign Relations.

The second conference was held on January 3; the boundary was considered; it was agreed to deem it the first and chief question (Roa Bárcena, *op. cit.*, 598); the boundary discussions are treated later in these editorial notes; they ended about ten days later, except as between the Mexican Commissioners and their Government.

The amount of indemnification to be paid by the United States was hardly within the field of negotiation; Trist had fixed on $15,000,000 as the sum; the Mexican Commissioners had no authority to accept less than $30,000,000; new instructions were necessary (Trist Papers, 28:61023, proposal of Trist of January 4, 1848; for the relevant remarks on that and the following day, see Roa Bárcena, *op. cit.*, 599).

A few other subjects were touched on at the conference of January 3 (see *ibid.*, 598); Trist's journal of the meetings ends with the record for that day, as he found that time lacked to write it up (Trist Papers, 27:61010–11); he drafted and delivered on January 4 an article regarding the rights of the inhabitants in the ceded territories and land grants (*ibid.*, 28:61024); but on January 5 the Mexican Commissioners proposed to write a project of the treaty, in order to limit and simplify the discussions; for this purpose and in order that the Mexican Commissioners might report to Querétaro, the conferences were, it seems, intermitted until January 13, except for one of January 7, on the boundary (see Roa Bárcena, *op. cit.*, 599–600; also Trist's despatch No. 26, of January 12, 1848, heretofore quoted in part).

The Mexican draft in a preamble and twenty articles was presented to Trist on January 9, 1848 (on January 10 according to Roa Bárcena, but the date written twice by Trist must be taken as correct). The text of that project is available in the form of a "hurried" translation made by Thornton. That translation, except for Article 5 on the boundary (printed below under the heading "The Boundary Proposals") follows; Trist noted that the original, with references made thereon to separate notes and modifications made by him, was presented to the Mexican Commissioners for them to work upon and that it remained in their hands (Trist Papers, 28:61092–95, 61088–89):

In the name of the Most Holy Trinity. The Government of the Mexican Republic and that of the United States of America, animated by a sincere desire to put an end to the calamities of the war which has unhappily existed between the two Republics and to establish upon solid bases relations of peace and good friendship which may procure reciprocal advantages to one and the other country and may ensure the concord, harmony, and mutual security in which the two peoples ought to live like good neighbors, have named as their Plenipotentiaries, namely, as the Plenipotentiary of the Mexican Republic, N. N. y N, and as the Plenipotentiary of the United States of America, N., who, their full powers having been exhibited and examined, which were found sufficient and in due form, under

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the protection of God Almighty, the author of peace, have arranged, agreed upon, and signed the following Treaty of Peace and Amity between the Mexican Republic and that of the United States of America.

ARTICLE 1. There shall be firm and universal peace between the Mexican Republic and the United States of America and between their respective countries, territories. cities, towns, and villages, without exception of places or persons.

ARTICLE 2. All hostilities, as well by sea as by land, between the two Republics shall be suspended at once, and this suspension of hostilities shall be inviolably observed by one and the other party. To this end, the respective orders shall be issued to the commanders of the sea and land forces of the two Republics.

ARTICLE 3. Immediately after the ratification of the present treaty by the Government of the Mexican Republic, the land forces of the United States shall retire from all the places which they occupy in the interior of the Mexican Republic and shall place themselves at the points which shall be chosen in common and which shall not be farther than thirty leagues from the ports. The blockade imposed upon the Mexican ports in the one and the other sea by the naval forces of the United States shall likewise cease, and the customhouses of the said ports shall immediately remain at the disposal of the Mexican Government.

ARTICLE 4. Immediately after the exchange of the ratifications of the present treaty, all the fortresses, territories, places, and possessions which may have been taken or occupied by the North American forces in the present war within the limits which are about to be fixed in the fifth article for the Mexican Republic, shall be definitively returned to the said Republic. The artillery and ammunition which existed in the castles or fortresses when they fell into the power of the troops of the United States, shall likewise be restored. With respect to the artillery taken without the said castles and fortresses, that which may exist in the power of the troops of the United States at the date of the signature of the present treaty shall be restored to Mexico.

All the prisoners taken from one or the other army, as well by sea as by land, shall likewise be restored at the exchange of the ratifications of the present treaty. Further, it is agreed that if there be now any Mexicans captives in the power of any savage tribe within the limits which are about to be fixed for the United States by the following article, the Government of the said United States shall require their delivery and that they be restored to their liberty and to their homes in Mexico.

. . . . . .

ARTICLE 6. The ships and citizens of the United States shall have at all times a free and uninterrupted transit by the Gulf of California to their possessions and from their possessions to the north of the dividing line, which is marked in the preceding article, it being understood that this transit is to be effected by the Gulf of California and by the River Colorado, and not by the land road except with the express consent of the Mexican Government.

If, by surveys which may be made, the possibility or expediency of constructing a railroad shall be proved, which in whole or in part shall run along the River Gila or upon one of its banks, right or left, within the distance of a maritime league from the one or the other side of the river, the Governments of the two Governments shall concert upon its construction in order that it may serve equally for the advantage and the use of the inhabitants of both countries.

ARTICLE 7. In the Rivers Gila and Bravo del Norte, which, according to the preceding article [Article 5], are divided in the middle between the two Republics, the navigation shall be free and common to the ships and citizens of both countries, without it being in the power of either of them to construct (without the consent of the other) any work which may hinder or interrupt, in whole or in part, the exercise of this right, not even under the pretext of favoring new modes of navigation. Neither shall any impost be collected, under any title or denomination, except in case of debarkation on either of the banks. If, in order to render

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the said rivers navigable or to keep them so, it should be necessary or expedient to establish any impost, this cannot be done without the consent of the two Governments. The stipulations contained in the present article do not prejudice the territorial rights of the one or the other Republic within the limits which are now marked out for them.

ARTICLE 8. All the temples, houses, and edifices dedicated to acts or exercises of the Catholic worship in territories belonging formerly to the Mexican Republic and which, by the fifth article of this treaty, remain for the future within the limits of the United States, shall continue to be dedicated to the same acts and exercises of the Catholic worship without any variation and under the especial protection of the laws. The same shall happen with regard to the movable or immovable property dedicated to the maintenance of the Catholic worship or to that of schools, hospitals, and other charitable or benevolent establishments. Finally, the relations and communication of the Catholics existing in the said territories with their respective ecclesiastical authorities shall be unfettered, free, and without any hindrance, although the said authorities may have their residence within the limits which are marked out in this treaty for the Mexican Republic, until a new distribution of the ecclesiastical districts be made in conformity with the laws of the Catholic Church.

ARTICLE 9. The Mexicans residing in territories formerly belonging to Mexico, and who are now within the limits marked out for the United States, may at any time pass over to the Mexican Republic, preserving in the said territories the property which they possess or alienating them and transferring their value to wherever it may suit them, without its being in the power of the United States to exact from them on this account any sort of contribution, burden, or impost. If the persons in question prefer to remain in the territories which they now inhabit, they may preserve the title and the rights of Mexican citizens; or immediately acquire the title and rights of citizens of the United States, if they should so wish. But in every case they and their property shall enjoy the most ample guaranty.

ARTICLE 10. The territories of New Mexico and of Upper California formerly belonging to the Mexican Republic, and which by the present treaty remain within the limits of that of the United States, shall be elevated into States similar to others which form the North American Confederation as soon as they shall have the population required for that purpose by the laws of the United States. And until this shall happen the inhabitants of the said territories shall continue to be ruled by the Mexican laws as far as regards the condition of the persons, contracts, wills, successions *ab intestato*, and other acts of civil law.

ARTICLE 11. All concessions of lands made by Mexican authorities in territories formerly belonging to the Republic and which by this treaty remain for the future within the limits of the United States, are valid and subsisting and shall be supported and observed in all times by the Government of the said United States.

ARTICLE 12. In consideration that a great part of the territories which by the present treaty are about to remain within the limits of the United States, is actually occupied by savage tribes whose incursions upon the Mexican districts might be extremely prejudicial, it is solemnly agreed that the Government of the United States of America shall take all measures and shall dictate and put in execution the necessary laws in order that, on the above-mentioned territories being populated by their citizens, the said tribes may neither be driven nor may make incursions upon the Mexican lands. It is likewise agreed that the same Government of the United States shall immediately and at all times adopt the precautions necessary to hinder the said tribes from making incursions upon the lands of the Mexican Republic or from committing hostilities of any kind upon its inhabitants, as well as to forbid and prevent the inhabitants of the United States of America from providing them with arms and ammunition. And if, in spite of all these precautions, it should still happen that some incursions of the said savage tribes should take place, it is likewise agreed that the Government of the United States shall cause the invaders to be exemplarily punished and dispersed, that the damage caused by them be repaired, and that the persons or

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things which they may have robbed in Mexican territory shall be restored to Mexico as speedily as possible, bona fide and without costs of any kind.

ARTICLE 13. In due compensation for the extension which is acquired according to the fifth article of this treaty by the ancient boundaries of the United States, the Government of the said United States obliges itself to deliver to the Mexican Republic the sum of in this form:

ARTICLE 14. The Government of the United States further obliges itself to take upon itself and fully to satisfy to the claimants all the sums due to them up to the present time and which may hereafter become due on account of the claims already liquidated and sentenced against the Mexican Republic, in conformity with the conventions agreed upon between the two Republics on the 11th of April, 1839, and the 30th January, 1843 [Documents 89 and 100], so that the Mexican Government will have absolutely nothing to pay for the future on account of the above-mentioned claims.

ARTICLE 15. The Government of the United States likewise obliges itself to take upon itself and fully to pay all the claims of their citizens as yet not decided against the Mexican Republic, from whatever title or cause the said claims may proceed or on what they may be founded, so that up to the date of the exchange of the ratifications of the present treaty, the accounts of every kind which exist or may be supposed to exist between the Government of Mexico and the citizens of the United States remain definitively and forever settled.

ARTICLE 16. In order that the Government of the United States may satisfy, in accordance with the preceding article, the claims of their citizens as yet not decided against the Mexican Republic, the Government of the said United States shall establish a tribunal of commissioners, whose decisions shall be definitive and conclusive, always provided that the decision upon the validity of any claim be made in conformity with the principles and rules which were established in Articles 1 and 5 of the unratified convention [1] which was celebrated in Mexico on the 20th day of November, 1843, and in no case shall sentence be given in favor of any claim which be not in conformity with the before-mentioned rules. If the tribunal of commissioners shall deem it necessary for the just decision of any claim to have the inspection of any books, registers, or documents which exist in the power of the Government of Mexico, the Government of the United States shall ask for them from the former, and they shall be transmitted to it in original or in attested copies in order that they may be laid before the said tribunal, it being well understood that no request shall be made by the Government of the United States for the said books, registers, or documents until the asking party in the claim shall have specified in each case, on oath or judicial affirmation, the facts which he may pretend to prove by the said books, registers, or documents.

ARTICLE 17. Each of the two Republics reserves to herself full power to fortify all the points in her own territory which she may deem expedient for her safety.

ARTICLE 18. If, unhappily, any point of disagreement should hereafter arise between the Governments of the two Republics, either upon the meaning of any one or more articles of this treaty or upon any other point whatever of the political or commercial relations of the two nations, the said Governments in their name bind themselves from this time to endeavor in the most sincere and earnest manner to adjust the differences which may present themselves and to preserve the state of peace in which the two countries now place themselves, making use to that end of mutual representations and pacific negotiations. And if, by these means, it shall not yet be possible to arrange any difference which may arise, an appeal shall not on that account be made to aggression or to hostilities of any kind on the part of one Republic against the other, but the difference shall be submitted to the bona fide arbitration of commissioners named by both parties or to that of a friendly nation.

[1] D.S., Unperfected H2; see the notes to Document 100.

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ARTICLE 19. And if (which it is to be hoped will not be the case) it should unfortunately happen that any war should come into existence between the two Republics, in this event they remain formally bound to observe the following rules:

1. The merchants of one of the states residing in the other shall have permission to remain there nine months for the purpose of collecting their active debts and arranging their affairs, after which they shall have full liberty to depart and to take with them all their effects without hindrance or molestation. Priests, women and children, men of letters of all classes, laborers, artisans, manufacturers, and fishermen, who are not armed and who dwell in cities, villages, or unfortified places, and in general all those whose calling conduces to the subsistence and to the common advantage of the human race, shall have the liberty of continuing their respective professions and shall not be molested in their persons, nor their houses or their effects burned or in any other way destroyed, nor their lands laid waste by the armies of the enemy into whose power they may fall by the events of the war; but if the necessity should arise of taking any part of their property for the use of the enemy's army, its value shall be paid at an equitable price.

2. In order to alleviate the condition of prisoners of war and not to expose them to be sent to distant and rigorous climates or confined in close or unwholesome habitations, the two contracting parties solemnly bind themselves, the one with respect to the other and in the presence of the universe, not to adopt any of these practices: that the prisoners which the one may make from the other shall not be transported either to the East Indies or to any country of Asia or of Africa, but that asylums situated in a wholesome air shall be assigned to them in the respective territories of the contracting parties; that they shall not be consigned to dungeons nor to prisons nor to galleys; that they shall not be put into chains nor bound nor in any other manner deprived of the use of their limbs; that the officers shall remain at liberty, under their word of honor, within the limits of certain districts which shall be assigned to them, and that commodious lodgings shall be granted to them; that the common soldiers shall be distributed in cantonments sufficiently open and extensive to take air and exercise, and that they shall be lodged in quarters as commodious and spacious as those of the troops of the power in whose hands they are prisoners; that this power shall cause to be furnished daily to the officers as many rations, composed of the same articles and in the same quantity, as those which the officers of the same rank in its own service enjoy in kind and in equivalence; that it shall likewise furnish to all other prisoners a ration similar to that which is granted to the soldier of its own army. The amount of their expenses shall be paid by the other power according to the liquidation of the account, which shall be reciprocally arranged for the maintenance of the prisoners, at the end of the war; and these accounts shall not be confounded or compensated with other accounts, nor shall the pay which may be due be retained by way of compensation or reprisals for any other article or for any other real or supposed claim. It shall be permitted to each one of the powers to maintain a commissioner of its own election in each one of the cantonments of the prisoners who are in the power of the other. These commissioners shall have the right of visiting the prisoners whenever they choose; they may likewise receive and distribute the succors sent to them by the relations and friends of the prisoners; finally, they shall be at liberty to send their reports in open letters to those who have commissioned them; but if an officer should break his parole, or any other prisoner should go out of the limits assigned to his cantonment, such officer or prisoner shall be deprived individually of the advantages stipulated in this article, as far as regards his liberty or parole or as far as regards his cantonment. The two contracting powers have further declared that the neither the pretext that war annuls treaties nor any other cause whatever shall be considered to annul or suspend this article, but on the contrary the time of war is precisely that for which it has been stipulated and during which it shall be observed as religiously as the articles more universally recognized by the law of nature and of nations.

ARTICLE 20. The present treaty shall be ratified, etc.

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It will be observed that the draft treaty presented by the Mexican Commissioners covers all the subjects of the treaty as signed except for Articles 17 to 20 thereof, regarding revival of the treaty of 1831 and importations during the military occupation.

It was on the basis of the Mexican draft that the discussions proceeded from January 13; the Mexican Commissioners were corresponding regarding major issues with their Government, whose final instructions thereon were deferred; in the meantime, the negotiators worked on the text of the treaty article by article, a task of much more labor as to both substance and form than Trist had anticipated; in the Trist Papers (27, 28, and 29) will be found much material on the details of the drafting (see, for example, the draft of Article 4 in Trist Papers, 28 : 61141, showing a suggestion by General Scott on January 16 which was written into the third paragraph of that article of the treaty).

As late as January 22, the Mexican Minister of Foreign Relations, Luis de la Rosa, wrote from Querétaro refusing to yield San Diego (Roa Bárcena, *op. cit.*, 601); by January 25 Trist and the Mexican Commissioners had reached an agreement which was complete in principle and nearly complete textually; the work of writing out for signature the instruments of the treaty had been commenced, although the final wording and comparison of some of the later articles was not finished until January 31 (see Trist Papers, 28 : 61158–59, 61206–7; 29 : 61273–79, 61316–17); but instructions from Querétaro of January 26, while accepting the boundary clauses as written, insisted that, following the signing of the treaty, the capital should be evacuated, the Mexican Government should be placed in control of all its revenues, and cash advances should be made; the instruction of January 27 left to the Mexican Commissioners the amount of the indemnity but maintained as an essential condition the matter of cash advances (Roa Bárcena, *op. cit.*, 604–5; and see, in Trist Papers, 29 : 61254–55, 61258, January 28, 1848, a draft of a loan agreement with an unnamed third party).

The negotiations had reached a stage where delay in the signing of the treaty was putting at risk the whole plan. Besides the quite anomalous position of Trist, there was the military situation to consider. No hostilities were in progress, but General Scott had orders of October 6, 1847, "to carry on further aggressive operations; to achieve new conquests; to disperse the remaining army of the enemy in your vicinity, and prevent the organization of another" (serial 509, pp. 138–40); and, when reinforcements arrived on January 22, the Mexican Commissioners were told by Doyle that Scott could no longer suspend movements for military occupation of the country unless he had complete assurance that the treaty would be signed; these statements had been communicated to the Mexican Government by the Commissioners (see their despatch of January 23, 1848, quoted in Roa Bárcena, *op. cit.*, 602).

Late in the evening of January 28 (Friday) Trist informed Doyle that there could be no further delay (Rives, *op. cit.*, II, 609). On the next day Trist wrote formally to the Mexican Commissioners

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terminating the negotiations, but at the same time promised that his note would be withdrawn if authority for the Mexican Commissioners to sign the treaty were received by the following Tuesday, February 1 (Trist Papers, 29 : 61283–84, 61267–70). On the same date, January 29, Doyle wrote a private note to Rosa giving an account of a recent conversation he had had with General Scott, in which Scott had explained, according to Doyle, the orders he had received from Washington, the fact that he was politically opposed to the administration, and the wish of some of his officers for a forward movement; that he would be compelled to send troops into the interior of the country unless a treaty of peace were signed; and, further, that "his orders were most peremptory to march upon Querétaro, and not to allow the general Government an opportunity of establishing itself in any other point of the Republic" (Rives, *op. cit.*, II, 609–10); and at the same time the Mexican Commissioners wrote most urgently to their Government at Querétaro (Roa Bárcena, *op. cit.*, 602–4).

The result was that on January 31 the Mexican Commissioners were instructed that they might sign the treaty in the form agreed upon with Trist; during the night of February 1 those instructions were delivered to the Mexican Commissioners at Mexico City, 120 miles away; and the treaty was signed at six o'clock in the afternoon of February 2 at the neighboring city of Guadalupe Hidalgo. It seems that Trist suggested the place of signature (see Roa Bárcena, *op. cit.*, 605–7). It is now called "Villa Gustavo Madero".

It is likely that all the examples of the various treaty papers were not completed at the time of signature; with an undated note received on March 3, 1848, Couto sent to Trist "the last example of the treaty, corrected and signed" (Trist Papers, 30 : 61504–5, translation).

The Boundary Proposals

By the instructions to Trist of April 15, 1847 (printed above), the acquisition of Lower California, while "of the greatest importance", was not a *sine qua non;* and, on the basis that Lower California was not embraced in the treaty, the instructions precluded Trist from agreeing to any boundary article less advantageous to the United States than the following:

> The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues[1] from land opposite the mouth of the Rio Grande, from thence up the middle of that river to the point where it strikes the Southern line of New Mexico, thence Westwardly along the Southern boundary of New Mexico to the South Western corner of the same, thence Northward along the Western line of New Mexico until it intersects the first branch of the River Gila, or if it should not intersect any branch of that river: then to the point on the said line nearest to such branch and thence in a direct line to the same and down the middle of said branch of the said River until it empties into the Rio Colorado, thence down the middle of the Colorado and the middle of the Gulf of California to a point directly opposite the division line between Upper and Lower California; thence, due West, along the said line which runs north of the parallel of 32° and South of San Miguel to the Pacific Ocean.

[1] See the Texas act of December 19, 1836, quoted in vol. 4, p. 136. See also Manning, Diplomatic Correspondence of the United States, 1831–1860, VII, 31–32, 294.

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A proper understanding of the meaning of that description of the line to its author requires that it should be read with the Disturnell Map, which was before the Secretary of State, James Buchanan, when the instruction was drafted (Trist Papers, 28 : 61025–29).

On July 13 and 19, 1847, further instructions to Trist regarding the boundary were written (printed in part above); those modifications were not peremptory and to some extent were alternative; the modification last written, which (on the same basis that Lower California was not within the treaty) was "deemed of great importance", was to this effect:

> The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues from the land, opposite the mouth of the Rio Grande, from thence up the middle of that river to the thirty second parallel of North latitude, from thence due west along this parallel of latitude to the Pacific ocean.

It was this which Trist put forward as his proposal at the conference with the Mexican Commissioners of January 3, 1848 (Trist Papers, 27: 61010–11; the lines of Trist's instructions of April 15 and July 19, 1847, are charted in Paullin, *op. cit.*, plate 94A, with relevant text at pp. 64–65); and in his letter to Thornton of December 4, 1847 (quoted previously), Trist had laid down this same basis for a boundary and had said: "it would be utterly idle to talk or to think for an instant of any other, & I cannot listen to a single word on the subject".

The instructions to the Mexican Commissioners of December 30, 1847, have been printed above. They were authorized to agree to a boundary (*ibid.*, 65, and plate 94A)—

> to follow the Rio Grande to a point two leagues north of the town of Paso del Norte, thence run westward along a parallel to the Sierra de los Mimbres, thence northward along that ridge of mountains as far as the height of the source of the Gila River, or of that branch nearest the Sierra, thence along the Gila River to the Colorado River, and thence along a parallel to the Pacific Ocean, unless that parallel cut the village of the port of San Diego, in which case it should run along the parallel two leagues north of San Diego.

The line proposed by the Mexican Commissioners at the conference of January 3 was to—

> start on the Pacific, two or three leagues north of the port of San Diego; thence, in a straight line to the confluence of the Gila & the Colorado; thence, in a line parallel with the Gila, & one league distant from its north or right bank, continuing said line to the top of the Sierra de los Mimbres; thence, southwardly, along the top of the said ridge or chain, to a point eight or ten leagues (one day's travel) north of the latitude of the Paso del Norte, on the Rio Bravo del Norte; thence, due east, across the Rio Bravo, to a point one league distant from its north or right [left] bank; thence in a line parallel with the said bank, to the sea.

The minute made by Trist of the second conference (from which the foregoing is excerpted; Trist Papers, 27: 61010–11) includes this account of the discussions:

> Their reasons for wishing to establish this line, are, not that they attach any value to the territory between this line & the 32nd parallel of latitude, proposed by me, nor to the port of San Diego (which, according to the latest information, is worthless); but 1st to retain a land communication with Lower California;

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2ndly to avoid parting with any portion of the territory of a *State*,[1] which is *impossible* for the Federal Govt to do. (The line by the 32nd parallel would cut off a part of the sovereign States of Chihuahua & Sonora, both of which have solemnly protested against any such cession.) 3rdly to have the Rio Bravo, the *whole* river, as their boundary.

The second of these points was *indispensable* to the possibility of the treaty's obtaining ratification, and to its being entered into; and the other points would greatly promote the object; which, at best, was exceedingly difficult to effect. I recognised the force of the reason in regard to this point, and that it inclined me to consent to make *the middle of the Gila* the boundary, instead of insisting upon our having both its banks, as the communications received by me from my Govt prior to my recall, had determined me to do. For the same reason, I was disposed to adopt the Sierra de Mimbres, down to the southern boundary of New Mexico. But, I could recede no further. I could give up *no part* of Upper California; and, as to any other boundary than the middle of the Rio Bravo, it would be a waste of words to talk of it.

They seemed to acquiesce, in regard to the Bravo; but informed me, that the land passage to Lower California (including the port of San Diego) constituted a part of the ultimatum to which they were *absolutely* restricted. Some conversation ensued, in which they enforced the necessity of this to the possibility of carrying the treaty. Finding them fixed upon this point, I said that I would reexamine the communications received by me, and give my definitive answer tomorrow. This will be, to read to them the passages relating to this point, and to state the absolute impossibility of my departing from what is there laid down.

One result of that conference of January 3, 1848, was that Trist abandoned his insistence on the 32d parallel as the boundary for the *entire* distance from the Rio Grande; but the Mexican Commissioners yielded their position only to the extent of accepting the course of the Rio Grande itself (instead of one league distant from its left bank) to a point one day's journey ("jornada") north of Paso del Norte. This appears from a memorandum written by Couto and presented at the close of the conference in question (Trist Papers, 27 : 61014). Accordingly, on the day following, January 4, Trist proposed a modified boundary article keeping to the line of the 32d parallel west of the Sierra de los Mimbres but not east thereof, written in these terms (*ibid.*, 28 : 61022):

> The Boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande; from thence, up the middle of that river to the point where it is intersected by the southern Boundary of New Mexico; thence Westwardly along the said southern boundary to the highest point in the chain of Mountains called the Sierra de los Mimbres; thence southwardly, along the top of said chain, to the thirty-second degree of North latitude; thence, along the said parallel of latitude to the Pacific Ocean.

There is a report of the conference of January 4 in Roa Bárcena, *op. cit.*, 598, which may be thus paraphrased: Trist stated that he could not change the line fixed by him between Upper and Lower California because his instructions required that it should be drawn

[1] The Gila was considered to be the northern limit of Sonora; the boundaries of New Mexico were somewhat indefinitely declared; but Chihuahua, to the south of New Mexico, was deemed to include Paso del Norte, which, by Disturnell's Map, was north of the 32d parallel, though actually at approximately 31°44′ north latitude (see Exposición, 238–39). The name of Paso del Norte was changed to Ciudad Juárez in 1888 by a decree of the Legislature of the State of Chihuahua.

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from the port of San Diego to the mouth of the Colorado in the Gulf of California. The Mexican Commissioners pointed out that with such a line Lower California would be entirely separated from the Republic; that it was necessary to have some stretch of territory for communication between Sonora and Lower California; that in their opinion the port of San Diego had always belonged to Lower California and not to Upper California; finally, that in this respect they could not go beyond their instructions and would have to obtain authorization. Various maps and observations of travelers regarding the situation of the port were examined, and it was agreed that San Diego really belonged to Lower California. Trist said, therefore, that at the next conference he would propose a new line which would obviate this objection.

With the report just cited is to be read Trist's own account of the conference of January 4 (which lasted "about five hours"); this is included in his uncompleted memorandum of that date, written "Tuesday night" (Trist Papers, 28 : 61025–29); the contrast between the remark attributed to Trist regarding a new line to be proposed by him and his own statement of his position is quite striking; the opening pages of Trist's memorandum of January 4 follow:

Memorandum.

TUESDAY NIGHT, *January 4th 1848.*

In my original instructions, under date April 15th 1847, the following passage occurs:

> "Should *Lower* California not be embraced in the Treaty, then it will become necessary to change the delineation of boundary contained in the fourth article of the projet in the following manner:
>
> "Instead of the concluding words, 'to the Pacific Ocean', let it read 'to a point directly opposite the *division line* between *Upper* and *Lower* California; thence, due West, *along the said line*, which runs north of the parallel of 32° and South of San Miguel, to the Pacific Ocean."

In the despatch of the Secretary of State, of the 25th October 1847, the following passage occurs:

> "The President has, also, directed me to express his regret that you should have been willing to entertain the question of surrendering *any portion* of *Upper* California to Mexico. By running the division line from the Colorado to the Pacific, along the thirty-third parallel of latitude, the bay & harbor of *San Diego* would be restored to the Mexican Republic. This port, considering that it is nearly five degrees further south, is, for every commercial purpose, of nearly equal importance to the United States with that of San Francisco. It was *to secure to us the port & harbor of San Diego beyond all question*, and to prevent the Mexican Government from hereafter contesting the correctness of the *division line* between Upper & Lower California, as delineated on the map which you carried with you, that, in my original instructions, I directed, that if you could not obtain *Lower* California, the 4th Article of the Projet should, in terms, fix this line as running 'North of the parallel of 32°, & south of San Miguel, to the Pacific Ocean'."

These passages now constitute what I have every reason to believe, and do firmly believe, to be the *only* obstacle to the immediate conclusion of a Treaty, in accordance with my original instructions, and such as was then *most earnestly* desired by our Government. The nature of the difficulty is as follows:

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The map referred to by the Secretary of State as the one which I brought with me, is the "Revised Edition" of the one published at New York, in 1847 (forty *seven*) by J. Disturnell. 102 Broadway, and bearing, in spanish, the following title: "Map of the United States of Mexico, as organized & defined by various acts of the Congress of said Republic, and constructed according to the best authorities."

Now, as traced upon this map, the dividing line between Upper & Lower California, does, as is stated by the Secretary of State, (who had the map before him when he wrote the words) run straight across the Californian peninsula, "north of the parallel of 32°, and south of *San Miguel*, to the Pacific Ocean". But, an examination of a variety of authorities renders it exceedingly doubtful whether *San Miguel* is not, itself, *south* of the 32° of latitude. So that, if this should hereafter prove to be the case, the words which I am here instructed to insert in the treaty, would call for a due east & west line which should at the same time be *north* of the 32nd parallel and *south* of the same parallel. For, this line, as traced on the map which I am instructed to make a part of the treaty, is itself *parallel to that parallel of latitude.*

Here, then, would be a ground for future controversy; and this is one objection, made, on the part of Mexico, to the proposed definition of boundary. But, this is not the only objection, nor the most important.

In the above passage of my original instructions, the words which I am instructed to insert in the Treaty, as part of the definition of boundary, *assume*, that the line referred to on the map and described "in terms" as running "north of the parallel of 32° and south of San Miguel", *is* the established "division line between Upper and Lower California". Now, this is denied on the part of Mexico. Her Commissioners affirm, that no such division line as this, between those two provinces, has ever been heard of in Mexico. They aver, that the town of San Diego, situated a few miles north of the port of the same name, has always formed part of *Lower* California, always been embraced within the jurisdiction of its government. They offer to produce an unbroken chain of authorities, to establish this fact. They do produce the recent work of Monsieur de Mofras, published at Paris in 1844, (forty-*four*) two years before the war began. In the atlas to this work, which is the fruit of great labour and minute research, and a very costly publication, defrayed by the French Government, as a purely scientific one; and which, consequently, is a very different thing in point of authority, from a map got up by a bookseller or engraver to meet the demand of the hour in our country: in this atlas, the boundary between the two Californias is laid down in exact conformity with what the Mexican Commissioners aver to be the *true* "division line"; that is to say, as running from the point of junction of the river Gila with the Colorado, across to the Pacific Ocean, in such a manner as to embrace the town & harbour of San Diego within *Lower* California.

All this could be got over, by adopting a different definition of boundary from the one prescribed to me, and (without referring at all, to what really is, or may have been, "the division line between Upper & Lower California") *making* the new boundary between the United States & Mexico, such as to leave both San Diego & San Miguel within the territory of the former.

This, I have endeavoured to effect. I have gone so far as to state, that unless it be acceded to, we must at once abandon all thought of making a treaty, and forthwith break off the negotiation. To show the *absolute impossibility* of *my* giving way upon this point, or allowing myself to be influenced in any degree, by any *reasons*, no matter what they might be, I read to them the above extract from the Secretary of State's despatch of the 25th October. In so doing, I acted in pursuance of a resolve which I thought that *nothing* could change.

The Mexican Commissioners replied by exhibiting to me the part of their instructions which relates to boundary; and in which, as a part of the *ultimatum* of their Government, they are expressly forbidden to agree to any boundary which shall not leave San Diego within the territory of Mexico.

My answer to this was, to repeat what I had previously said, & to express my regret that the negotiation should be broken off. But, if it must be so, I could not help it. They saw the position in which I was placed by my Government; and we must, at once, give up all idea of a treaty, unless they could obtain a modification of their instructions.

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This, they said, was impossible. They *knew* it to be so. They knew that the Government *could* not accede to it, because it would render the ratification of the treaty *impossible*. Although I had told them, that, in the position in which I was placed with regard to this point, *reasons* were things which I had nothing to do with, they went over the reasons which they had previously stated, and concluded by saying, "Is it *possible*, that, after all our efforts & labours, efforts which are not unknown to you, and in presence of the immense sacrifice which we have made up our minds to, the cause of Peace, when at the very moment of triumphing, should be prostrated for such an object as this? An object, which, while it is one of utter insignificance to your Government, as an addition to the immense acquisitions it will make, is, in itself, of the utmost importance to us, independently of its indispensableness to the treaty's obtaining ratification. Bowing to the law of necessity, we give up to you an empire; we give up our *whole* territory, *all* that we possess, & *can* part with. For, our Government has no right to alienate any portion of one of the States; and, beyond the territory of the States, *all* that will be left to us will be *Lower* California: a district, in itself, of no value to us; and which, if it were five hundred miles distant from our main coast, instead of being, as it is, but fifty or sixty, you should be most welcome to take, together with the rest. But, we are compelled to retain it, because its retention is the only means of preventing our country from being inundated with smuggled goods, and to avoid the endless complaints & international misunderstandings which such a system of smuggling could not but give rise to. Thus compelled to retain it, all we ask is, to be allowed to retain it *entire*, by your not insisting upon cutting off from it the little piece of ground, lying between the division line, as it is *erroneously* laid down in your map, and that same division line, as it is accurately & truly laid down in the French map."

Among the reasons stated by them, were the following:

The line, as laid down in our map, throwing San Diego on our side, leaves all that part of Lower California *without a single port*. Moreover, it completely *insulates* the Peninsula with respect to Mexico, by depriving her of the land passage to it. For these two reasons, the adoption of that line as the boundary with a foreign nation—even if it had been the true dividing line between upper & lower California, whilst both constituted but parts of the territory of one & the same nation—would, to all practical intents, be equivalent to an abandonment of the entire peninsula. This, considered in itself, would operate most prejudicially against the treaty. And the injurious effect thus produced could not but be vastly augmented by the consideration which would infallibly be urged by the opponents of the treaty, that our inflexibility in demanding that little piece of ground, when the value of it to us was so infinitely small when compared with its importance to them, admitted of no other explanation than a design on our part to possess ourselves of the peninsula, and to pursue to an indefinite extent the projects of territorial aggrandisement which we are here so universally believed to be intent upon.

Still, I gave the same reply. Shylock himself was not more inexorable. I had nothing to do with *reasons*. All I could do was, to conform to the determination of my Government, announced in the positive & peremptory manner they had heard. If the restoration of peace was to be prevented by this little difference, it would certainly be much to be deplored; but it was altogether beyond my power to obviate this. I could therefore but repeat that we must give up all idea of making peace, or they must obtain a modification of their instructions. Meanwhile, let us proceed with the other articles of the Treaty.

No: so long as this article remained unsettled, they could do nothing. It would be useless to ask for a modification of their instructions on this point, because a treaty which should surrender it could not be carried through. It would be the only point of serious difficulty between us; and until it was disposed of, they could do nothing.

Thirdly, after a conference of about five hours, I left them, saying, that I would consider of the subject; but I had not the least idea that it was possible for me to depart from what I had said.

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The port of San Diego was definitely within the *sine qua non* of the instructions to Trist; it would be absurd to regard that portion of the instructions as the "accident" which Trist called it; San Diego was well known as a valuable harbor; it was (rightly) thought to be within Upper California because of the reliance placed on the Disturnell Map, which Buchanan had before him when the instructions were written; but one major purpose of the instructions was the inclusion of San Diego within the territory of the United States; the naming of Upper California was a means to that end. In the later of the two instructions recalling Trist, that of October 25, 1847 (printed above and quoted by Trist in his memorandum of January 4, 1848), emphatic disapproval was expressed of the suggestion that San Diego might be left south of the boundary to be agreed upon; and the same thought is in the letter of Buchanan to Trist of October 27 (Trist Papers, 26:60621–22).

Trist, however, reached the strange conclusion that the important question was where the southern line of Upper California legally ran. This to him was the vital point. If the line as theretofore fixed between Upper and Lower California left San Diego in the former, then he obtained San Diego, but otherwise not. The idea of the administration was to secure another port on the Pacific coast south of San Francisco. Trist made this mean that the line was to run wherever it had previously been run between the two Californias by the Mexican Government or by the Spanish Government.

The arguments used by Trist to convince himself that his instructions regarding San Diego were the result of "pure accident" and to support the idea of leaving San Diego south of the boundary are very interestingly disclosed in the unfinished memorandum last cited, written by Trist during the night of January 4 and leading up to his proposal of January 5; following the portion of that memorandum which has been quoted are these paragraphs:

> Under these circumstances, the question presents itself, *What course am I to pursue?* Supposing this to be the only obstacle to the immediate restoration of Peace, must I allow such an opportunity to be lost, merely on account of an object which, compared with the immediate magnitude of the entire subject, with the absolutely incalculable importance of all the considerations which demand peace, is certainly of minute consequence, whatever the value of the port of San Diego may be? And, as I have fully explained in my despatches, the question is not between this treaty *now*, & a better treaty, three months, or six months, or twelve months hence. The question is between *this* treaty *now*, and *no* treaty, for an indefinite time to come, perhaps *for ever*. This is the question. For, let the present Government—a Government built up by the friends of peace, solely for the purpose of making peace; and so built up against a thousand odds against their being able to succeed: let this Government once go down, as go down it must, unless the object for which it has been formed be speedily accomplished, and the chance for peace, the chance for a treaty of any kind, is gone for the present, is gone perhaps *for ever:* most certainly & unquestionably, gone *for a period* that *no one* here pretends to be able to assign a limit to.
>
> This is the question which now forces itself upon me. What answer am I to give? What answer do my Instructions give, together with the communications subsequently received by me?
>
> Properly speaking, they give *no* answer to *this* question. They *cannot* give an answer to *it*. For, they were written without any reference to it: without any knowledge of the state of things, in which it presents itself to me; without any

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reference to the possibility of such a state of things. They give no indication, that any such thing was dreamed of. The only indications of this nature which they do afford consist of proofs of an entire misconception of all that has passed here, or is passing here, or *can* take place here, with respect to the question of peace. They afford no indication, that the question has ever presented itself to our Government. How it would decide, *if* the restoration of peace, or the indefinite protraction of the war, depended solely upon our insisting upon having the port of San Diego. The only indication bearing upon the subject, which they afford, is, that, *without any reference whatever to such dependence*, this port is embraced, *as a part*—and, comparatively speaking, a very minute & insignificant part—in an exceedingly comprehensive demand of territory. It is true that this *whole* demand is laid down as the *ultimatum* of our Government. But still, this determination was originally taken without any reference to the question which now presents itself in regard to this minute part. It is true likewise, that, since this determination was originally taken with reference to the whole, it has been taken again with reference to this very part. But still, here again, this occurred without reference to the question that now presents itself.

Thus much is certain. But this is not all. The fact, that the port of San Diego is included in our ultimatum, has its origin in *accident*, in pure accident: the accident of the Secretary of State's having before him one map instead of another. That map was the one just published at New York, as an engraver's speculation, to meet the demand which put it into the hands of every body. In making the definition of boundary, with this map before him, his eye was caught by the fact, that the division line between the two Californias, as there laid down, runs a few miles south of the port of San Diego and just south of a little place called San Miguel; and seeing this, he, in order to preclude dispute as to the exact position of this line, wrote the words which I have quoted. His object was, to make a clear & indisputable definition of the future boundary between the United States & Mexico; a part of which boundary was to be the southern limit of Upper California: it was to give that province to the United States, the *whole* of it, but no part of *Lower* California. This was his object; and, in accomplishing this object, he was thus led to make mention, a purely incidental mention, of San Miguel. Had the map before him happened to be the one contained in the atlas to the recent work of Monsr de Mofras, or had he consulted Humboldt, or any map following Humboldt, the words "which runs north of the parallel of 32° *and south of San Miguel*" would never have formed part of the definition: for according to those high authorities "the division line" which it was his sole object to define in words, runs *north* of, not only San Miguel but San Diego also. According to them the *Presidio* and port of San Diego forms part of "Old or Lower California", as contradistinguished from "New or Upper California"; and the division line between them runs just north of the *Presidio*, which is a few miles north of the port.

That this is the

In his next proposal, presented at the conference of January 5, Trist abandoned the 32d parallel for any part of the boundary; and, perhaps convinced for the time being, or perhaps merely assuming, that San Diego was in Lower California, he ran the line from the mouth of the Gila to a point on the Pacific one league *north* of the Bay of San Diego. It will be seen that the boundary described in the January 5 proposal is the boundary of the treaty from the Gulf of Mexico to the confluence of the Gila and the Colorado; the straight line thence westward has, by the treaty, its terminal point on the Pacific one league *south* of the port of San Diego.

That draft of January 5 is noted by Trist as "proposed *for consideration*" and "not, as being definitely agreed to" by him; the article as written included a paragraph for religious observance of the boundary established (Trist Papers, 28 : 61070–71); it described

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the line as running up the Rio Grande to the southern boundary of New Mexico and continued thus:

thence, westwardly, along the southern boundary of New Mexico to the Southwestern corner of the same; thence, northward, along the western boundary of New Mexico, until it intersects the first branch of the river Gila; (or, if it should not intersect any branch of that river, then, to the point on the said line nearest to such branch, and thence in a direct line to the same) thence down the middle of said branch, and of the said river Gila, until it empties into the Rio Colorado; thence, across the said Rio Colorado to the Pacific Ocean, following the established division line between Upper and Lower California; and, lest any difficulty should hereafter occur in tracing the said division line upon the ground, it is agreed that it shall consist of a straight line drawn from the middle of the mouth of the river Gila to a point on the shore of the Pacific one geographical league due north of the northernmost point of the Bay of San Diego. And the vessels and citizens of the United States shall, in all time to come, have & enjoy without any hindrance restriction or condition whatever, free and uninterrupted access to and from the Ocean, through the Gulf of California, and down & up the Rio Colorado below its junction with the Gila, from and to their possessions north of the said division line.

The foregoing proposal of Trist appears to have been deemed by the Mexican Commissioners to be definitive, for it was sent by them on the following day to their Government; it seems that there was no conference on that day (see Roa Bárcena, *op. cit.*, 599); but at least there were conversations; and Trist received on January 6 a draft of a boundary article which the Mexican Commissioners had written in the precise wording of Article 4 of their instructions of December 30, 1847, omitting only the last sentence thereof regarding a guaranty (Trist Papers, 28 : 61050; the Mexican instructions are set forth above).

On January 7 Trist changed his mind; he had now concluded that San Diego was in Upper California; but his next proposal was to divide the port so that the northern portion thereof, including the entrance, should be American and the southern portion Mexican; and in return the United States was to acquire a square league of territory on the western bank of the Colorado, below the mouth of the Gila. Textually, the draft presented by Trist on January 7 described the line in the same words as that of January 5 as far as the confluence of the Gila with the Colorado, and continued thus (Trist Papers, 28 : 61068; this is the fair copy; with slight differences of wording, the changes from the January 5 draft of Trist are shown also in *ibid.*, 61070–71):

thence, across the said Rio Colorado, to the Pacific Ocean, following a straight line drawn to the point on the shore of the Port of San Diego, on the southern bank of the creek or inlet, on the north bank of which creek is the settlement called Rancheria de las Choyas,[1] which point is about equidistant from the northern and southern extremities of said Port, thence, due Southwest, across the said port, and across its outer shore, to the Pacific Ocean: and the vessels & citizens of Mexico shall, in all time to come, have & enjoy, without any hindrance, restriction or condition whatever, free and uninterrupted access to & from the ocean, through the mouth of said port, from & to the portion thereof, south of the aforesaid southwest line. In the same manner, the vessels & citizens of the United States shall, in all time to come, have and enjoy without any hindrance,

[1] See the Plan of the Port of San Diego, facing p. 236.

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restriction or condition whatever, free & uninterrupted access to and from the ocean, through the Gulf of California, and down & up the Rio Colorado below its junction with the Gila, from and to their possessions north of the said Boundary line. A suitable piece of ground, one league square, on the western bank of the Rio Colorado, below the mouth of the Rio Gila, shall be assigned to the United States, as a place for discharging & loading their vessels & depositing their merchandise; which piece of ground shall be under the exclusive jurisdiction of the United States of America. Should the State of Sonora, one of the United Mexican States, whose territory is bounded on the north by the river Gila, hereafter agree to cede to the United States of America, for the purpose of making thereon a road, railway or canal, a strip of her said territory, along the margin of said river and one marine league in width, the consent of the United Mexican States is hereby given to such cession; and the same, when made, in virtue of an act of the Congress or Legislative Body of said State, shall forthwith vest the entire Sovereignty over such strip of territory in the United States of America.

The discussions of January 7 are to some extent reported (Roa Bárcena, *op. cit.*, 599–600). Trist withdrew his proposal of January 5; he said that from a subsequent examination of the matter he had found that Baron von Humboldt, Mofras, and other geographers assigned San Diego to Upper California and therefore he could not agree that it should be without the limits of the United States. The Mexican Commissioners, who already had doubts resulting from recent investigations, pointed out that the opinion of Mofras was not of great importance, as it did not appear that he had taken astronomical observations to fix the latitude; it was even observed that the text of his work was not in conformity with the atlas, and that, while the opinion of Humboldt was worthy of respect, one might oppose thereto that of Clavijero, who assigned San Diego to Lower California; but nevertheless they would examine further material. Trist replied that he was not at liberty to yield and that exclusion of San Diego from the treaty would prevent its approval by the President of the United States and its acceptance by the Senate.

The Mexican Commissioners declined to accept the article of January 7 as framed by Trist and wrote again to their Government at Querétaro (*ibid.*); they were wholly unwilling to give up a square league of territory on the western or right [1] bank of the Colorado (see their comment in Exposición, 237); the question left was the future of San Diego. Trist deemed that the United States was demanding "to retain the whole of *Upper* California, but asking no part of *lower*"; he was now finally (and rightly) convinced that San Diego was within the former; as his proposed division of the port for a supposed equivalent was unacceptable, the line running to the south of San Diego was the necessary and only alternative, if his demand was to be met; and in the next proposal the line was described in accord with the latest views of Trist.

[1] As the Colorado from its confluence with the Gila to the Gulf of California flows in the general direction of north to south, it was assumed that "western" and "right" bank meant the same; but obviously the right bank, at a bend, might be the northern, southern, or even eastern bank of the river; in fact, as afterwards appeared, the Colorado took a course about west-northwest from the mouth of the Gila, making the right the northern bank. See the map facing p. 416.

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While the Mexican Commissioners were awaiting word from their Government, they prepared their project of a treaty; this was delivered to Trist on January 9; the line of its boundary article, which follows in translation (cited above), is almost that of the treaty; and in this draft article is the first specific mention of the Plan of the Port of San Diego of Juan Pantoja (Trist's draft of January 7 shows that the plan had been previously examined):

ARTICLE 5. The dividing line between the two Republics shall commence in the Gulf of Mexico three leagues from land in front of the mouth of the Rio Bravo del Norte, or of the deepest of its arms should it have various arms at its mouth; it shall run along the middle of this river in its entire course till the point where it strikes the southern boundary of New Mexico; it shall then follow along the same southern boundary and along the western boundary of New Mexico until it strikes on this last the first branch of the River Gila; it shall then continue along the middle of this river to its confluence with the Colorado; and from the point of confluence of the two rivers the dividing line shall run straight to the westward to three leagues from land opposite the Punta de Arena on the coast of the Pacific Ocean to the south of the Bay of San Diego, as the said Punta de Arena is marked in the Plan of the Port of San Diego which was published in Mexico in the year 1825 and of which copy is annexed to this treaty, signed and sealed by the Plenipotentiaries who have celebrated it.

In order to lay down this line with due precision in attested maps and to establish upon land landmarks which may render evident the boundaries of the two Republics as they are described in the present article, each of the two Governments shall name a commissioner and a geometer who shall meet, before the term of counted from the date of the ratification of this treaty, at the Punta de Arena on the coast of the Pacific and shall proceed to notify and to mark the said boundary along its entire course to the mouth of the Rio Bravo del Norte. They shall keep journals and make plans of their operations, and the result agreed upon by them shall be held as a part of this treaty and shall have the same force as if it were inserted in it; the two Governments having to agree amicably upon the arrangement of whatever may be necessary for these individuals and for the respective escort which they must take with them, always provided it be deemed necessary.

The two Republics promise in the most solemn manner before God and all nations that the dividing line established by this article shall be religiously respected by each of them and that no variation shall in future be made in the said dividing line, except by the express and free consent of both nations lawfully given by the supreme Government of each of them in conformity with their own Constitutions.

It does not appear that any further conference was held until January 13; in Trist's despatch of January 12 he wrote that he believed that "every thing" would "be agreed upon between us" on the following day, and he had this to say on the boundary question (D.S., 14 Despatches, Mexico, No. 26):

The Boundary (which has been agreed upon, subject to the approval of the Executive at Queretaro) will be the one defined in the Projet which I brought out, with a slight variation at its western extremity. The reasons which have governed me in this, as well as in not insisting (as I had at first determined to do) upon the parallel of 32°, from the Rio Bravo, will be fully explained hereafter: time not permitting me to do so now.

The foregoing is not to be read as meaning that the drafting of the boundary article of the treaty had then been completed, but rather that there was an accord in principle on the basis of Article 5 in the

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Mexican project of January 9; it seems that approximately the final wording of Article 5 of the treaty was written by January 16 (see Carreño, Mexico y los Estados Unidos de America, 229); on that day the Mexican Commissioners wrote to Querétaro enclosing the boundary article as drafted; they said that during the time when it was in some degree doubted by Trist whether the port of San Diego belonged to Upper or to Lower California they were able to obtain from him a line terminating on the west at a point one league to the north of that port; that as the instructions to Trist did not permit him to give up any part of Upper California, they, in order to retain San Diego, had relied solely on the authority of a certain ancient writer who extended the peninsula of Lower California up to that town; but that against this authority Trist had then assembled and presented various data already known to them to show that San Diego since its founding in 1769 had incontestably belonged to Upper California; that his conviction on the point was so strong and his instructions so precise that every effort to induce him to give way was of no avail; that no variation in the line of the article as written could be obtained; that peace or war depended on accepting or rejecting it; and that in the crisis which the negotiation had reached it would not be possible for them even to continue the peace discussions without taking as a basis the acceptance of the proposed article (*ibid.*, 228–29; Roa Bárcena, *op. cit.*, 600–1); but the Government at Querétaro, which had refused (January 14) even the Trist proposal of January 5, declined (January 22) to yield in respect of San Diego (*ibid.*); and not until January 26 was authority sent to the Mexican Commissioners by their Government to accept the boundary clauses of the treaty as written (*ibid.*, 604).

Comparing Article 5 of the Mexican project of January 9 with Article 5 of the treaty, it will be seen that the last two paragraphs of each are very much the same; but the opening paragraph of the project is expanded into two paragraphs of the treaty; in the final text first appears mention of the Disturnell Map [1] and of its lines of the southern and western limits of New Mexico as being those of the treaty, which includes the specific statement that the southern boundary of New Mexico runs north of "Paso"; the reference to the Plan of the Port of San Diego is elaborated and gives for the source of the treaty copy the Spanish atlas of 1802 rather than the Mexican publication of 1825; and the line from the confluence of the Gila and the Colorado westward differs in that by the project it ran to "three leagues from land opposite the Punta de Arena", while in the treaty the terminal point is on the coast, about one mile south of the Punta de Arena, expressed

[1] That Paso del Norte should be south of the frontier was deemed of great importance by the Mexican Commissioners; prior to 1824 that settlement had been within the *reino* of New Mexico; since then the northern limits of Chihuahua had been deemed to include the town; certain maps consulted at the time still put Paso del Norte in New Mexico; the Disturnell Map was thought to be accurate in this regard and for the limits of New Mexico generally; hence the specific mention in Article 5 of Disturnell's Map and, from abundant caution, of "Paso" as well; see the discussion in Exposición, 239.

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as a marine league south of the southernmost point of the port; moreover, in the treaty, the line is expressly declared to be the "division line between Upper and Lower California".

With his despatch No. 27, of January 25, 1848 (enclosure A), is a memorandum wherein Trist gives his reasons for the location of the line from the mouth of the Gila River to the Pacific, now the southern boundary of California.[1] That memorandum, which follows (from Trist Papers, 28 : 61058–63), and which seems not to have been heretofore printed,[2] should be read in the light both of the Disturnell Map and of a modern map of the region in question:

A. MEMORANDUM, FRIDAY NIGHT, *Jan. 7, 1848.*

In my original instructions, under date April 15th 1847, the following passage occurs:

> "Should Lower California not be embraced in the Treaty, then it will "become necessary to change the delineation of boundary contained in the "fourth article of the projet in the following manner:
> "Instead of the concluding words 'to the Pacific Ocean', let it read 'to a "point directly opposite the division line between Upper & Lower California; "thence due West, along the said line, which runs north of the parallel of "32° & South of San Miguel, to the Pacific Ocean'."

In the despatch of the Secretary of State, of the 25th October 1847, the following passage occurs:

> "It was to secure to us the port & harbor of San Diego beyond all ques- "tion, & to prevent the Mexican Government from hereafter contesting the "correctness of the division line between Upper & Lower California, as "*delineated on the map* which you carried with you, that, in my original "instructions, I directed, that if you could not obtain Lower California, "the 4th article of the Projet should, *in terms*, fix this line as running 'North "of the parallel of 32° & South of San Miguel, to the Pacific Ocean'."

[1] Except for about 6½ miles at the eastern extremity of this portion of the treaty line. The Colorado (in its course of 1849) from the mouth of the Gila, flowed about west-northwest and then turned back toward the south. So some 6½ miles from its beginning at the confluence of the two rivers, the straight line westward crossed the Colorado; this stretch of the line formed part of the international boundary only during the intermediate period from the Treaty of Guadalupe Hidalgo to the Gadsden Treaty. That bend of the river became part of the boundary between California and the Territory of New Mexico (later, for this region, the State of Arizona); and the small area between that bend and the straight 6½-mile stretch which was for a few years part of the international line thus came within the Territory of New Mexico (Arizona). For the river as it ran in 1849, see the map facing p. 416. Since then, both natural forces and artificial works, such as irrigation projects, have from time to time caused changes in the courses of the Colorado and the Gila; river positions of various years are shown on map No. 27000 of the Bureau of Reclamation, Department of the Interior, entitled "Yuma Irrigation Project Arizona-California", issued in 1935; the junction of the Gila and the Colorado is thereon shown to be some miles east and slightly south of its location in 1849.

[2] There is a reason why this memorandum was not officially printed at the time; while called an enclosure to, it was not in fact enclosed with, despatch No. 27 (which reached Washington on February 28), but was sent from Mexico City some time later than February 12 (see despatch No. 29, of that date, printed below) and was almost certainly not received at the Department of State until after the Senate had acted on March 10.

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Now, these very "terms" are a subject of great embarrassment to me; & the "*map*" here referred to, (& which I was directed to adopt) is also a subject of great embarrassment.

With respect to the "*terms*", it is exceedingly doubtful whether they do not *involve a contradiction*, by calling for a line which shall run both north & south of the same parallel. On the map referred to, & by following which the "terms" now under consideration were written, "the division line between Upper & Lower California" is represented as being a parallel of latitude, "running *north* of the parallel of 32°, & *south* of San Miguel": its distance from this parallel being a little upwards of one fourth of a degree, or more than 15 miles. But, it is altogether uncertain whether the *true* position of San Miguel, be not either directly upon the thirty second parallel, or a little south of it: the probabilities appear to be that it is the one or the other. In either case, a "due West" line, "running north of the parallel of 32°, & South of San Miguel, to the Pacific Ocean," would be a self contradiction. Nor would it mend the matter by leaving out the words "*due West*": for no line whatever, whether itself a parallel of latitude or not, (& on the map, it *is* one) could possibly get south of San Miguel, without ceasing to be a line running north of the thirty second parallel. In getting to the ocean, it must leave San Miguel to the south, or else it must cease to be itself: that is, it must cease to be *a line running north of the 32d parallel.*

The data upon which rests the great *probability*, that the true position of San Miguel is as above stated; & the *certainty* almost, that it cannot be north of a line upwards of fifteen miles north of 32°, will be stated presently: a part of them, at least. I will here enter upon the second point: the great embarrassment occasioned by the *map*, when taken in connection with another part of the definition of boundary, & with the belief & intention in which it was written.

Agreeably to "the delineation of boundary" which I am instructed to insert in the treaty, the line is to run from the mouth of the Gila "down the middle of the Colorado & the middle of the Gulf of California, to a point directly opposite the division line between Upper & Lower California, thence due West, along the said line which runs north of the parallel of 32° & South of San Miguel to the Pacific Ocean."

Now, agreeably to the map, the mouth of the Colorado is just half a degree north of the parallel of 32°, & a little more than one fourth of a degree north of "the division line between Upper & Lower California". In writing this "delineation of boundary," therefore, it was manifestly intended that it should, & believed that it would, give us the *whole* of the right bank of the Colorado down to its mouth, & moreover about fifteen miles of the Western coast of the Gulf of California below the mouth of the river.

Such was the intention & belief, founded on the map. But, *agreeably to Geographical facts*, where should we in reality be put by this division-line, so traced upon the map, as running "due west", upwards of fifteen miles north of the thirty second parallel? This question is answered by the work of Monsr de Mofras, published at Paris in 1844 (forty-*four*) by the French Government.(a) The Atlas

(a) The title is,—"Exploration of the Oregon Territory, the Californias, & the Vermillion Sea (Gulf of California). Executed during the years 1840, 1841, & 1842, by Monsr Duflot de Mofras, attaché to the Legation of France in Mexico. Published by order of the King, under the auspices of Marshal Soult, President of the Council, & of the Minister of Foreign Affairs. Paris, 1844".

From the Preface, it appears that Monsr de Mofras was sent to Mexico for the special purpose of "visiting the western provinces of Mexico, New Galicia, Colima, Sinaloa, Sonora, the Gulf of California, Old & new California, the Russian forts in that quarter, the American & English posts at Astoria & along the Columbian river, & elsewhere within the Oregon Territory". The object of his exploration was "to obtain information as to what advantages, independently of the "political point of view, might be held out to our commerce & navigation by "mercantile enterprises & commercial establishments, in those regions, as yet "but little known in France."

In preparing for the exploration, as well as in preparing the results for publication, especially in regard to the "Geographical description & the hydrography of the coasts", he received all the aid which could be afforded by the French Govern-

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contains a special chart of the mouth of the Colorado, with all its soundings & other details; & its latitude is laid down as being in 31°51′,0″: that is to say, *forty* miles south of where our map puts it; *twenty-five* miles south of where our map puts "the division line"; & more than *nine* miles south of any *possible* line "running due west, north of the parallel of 32°."

So that, even if the parallel of 32° were made the division line; even then, instead of our having fifteen miles of the Gulf coast below the mouth of the river, we should still be without any landing place on either of its banks, until we got nine miles above its mouth.

This, I have endeavoured to remedy, by demanding as a place of deposit, one league square, at a suitable place on the right bank (which the chart shows to be the *channel* bank) of the Colorado, below the mouth of the Gila. This, I have demanded & insisted upon; but not in the intention of making it a *sine qua non*, should the question of treaty or no treaty turn upon this point. For I constantly bear in mind, that this is not a mere treaty for the settlement of limits, but one, on the making of which—on the speedy, the immediate, conclusion of which—depends the termination of *war*. The question is between Peace and War. On the one hand is *Peace*, peace now & immediately. On the other hand, is War; the protraction for an indefinite time to come, of war, already raging; & which, unless speedily arrested, is pregnant with consequences to our Country, infinitely worse, far more to be deprecated, than any which could attend a war, *brought home* to her by an army, two hundred thousand strong, of the best troops of England or France; and that army posted in any position which Napoleon himself might have selected for them, as the one most favourable for making us feel in the fullest force, *what war is*. Such is my conviction, & the grounds of this conviction have been in part stated in my Despatch of the 6th December.

But, to return to my present difficulties:—Unless the latitude of the mouth of the Colorado, given by *de Mofras* be erroneous, & unless the error *exceed nine miles*, NO "point directly opposite" *any* "division line between Upper & Lower California" (even supposing such division line to be now for the first time arbitrarily adopted) can be found, by going "down the middle of the Gulf of California", without placing that division line *south*, instead of "*north* of the parallel of 32°." Consequently, even if it were agreed to establish now, as "the division line between Upper & Lower California", a line commencing on the Gulf, the above prescribed delineation of boundary would have to be changed, either by *omitting* the words underscored in the following extract, or by changing the word "north" into "south": thence, due west, along the said line, which runs *north of the parallel of 32° & south of San Miguel*".

As thus modified, the delineation of boundary would imply, as an ascertained & settled fact, that "*the* division line between Upper & Lower California"—that is to say, "the *true & already established* division line, as heretofore recognised—commences on *the Gulf* some distance below the mouth of the river. The correctness of this implication is denied on the part of Mexico. She contends, that Lower California has always been considered as consisting of "the Peninsula", the *whole* "Peninsula", embracing a passage by land to the Continent, round the head of the Gulf; & across the Rio Colorado.

On examining the authorities with reference to this position, it appears to be abundantly verified, & fully made good. "Old or Lower California" is invariably spoken of as consisting of "The Peninsula," as embracing the whole of it. In both of the maps accompanying the work of de Mofras, the division line between

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ment, thro its departments of Marine & War; & similar assistance was given by "the learned Navarrete, Director of the Hydrographic office at Madrid". The geographical positions chiefly relied upon in the construction of his map, are, he says, "entitled to all confidence, as is proved by the authorities", cited on the table which he gives.

Whether these positions be or be not correct, the probability of correctness is unquestionably very much on their side, as compared with a map, suddenly got up, as the mere speculation of an engraver or bookseller, to meet the demand in our country for Maps of Mexico. And this is the character of the one I brought with me.

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"Old or Lower" & "New or Upper" California is laid down as commencing *on the Colorado:* in the one, *at* the mouth of the Gila, in the other, a little *above* it. The work itself (vol. 1. p. 202.) whilst describing the Gulf of California, in the chapter devoted to *Lower* California, says "From the thirty first parallel upwards, its width diminishes rapidly till it reaches the Rio Colorado, *which separates Old California* from the northern part of Sonora". Again (p. 217) "About twenty leagues distant from the Rio Colorado, is the Mission of Santa Catalina, which is the northernmost of all those of *Lower* California. It has scarcely any inhabitants, & is six days travel from the port & mission of San Diego, upon the Pacific Ocean." In his map, this mission of Santa Catalina—which is among the places actually visited by the author—is placed north of the thirty second parallel, at a point about intermediate between it & that of the mouth of the Gila.[1] Again, immediately after the above words he says, "The line of separation between Old & New California begins nearly at the mouth of the Rio Colorado. . . . The Peninsula forming *Old* or *Lower* California is bounded on the north by Upper or New California, on the South & west by the Pacific Ocean, & on the east by the Vermillion sea". This, it is to be noted, is, from the very nature of the words employed, nothing but a *general* description of the line of separation. "Nearly at the mouth", may mean above, or it may mean below, the mouth. To know which of the two is meant, we must look to the context, (and particularly to the special facts stated therein) & to the maps connected therewith. Now, one fact of the kind, we have just seen: the Mission of Santa Catalina is stated by him to be within *Lower* California, & is placed on the map as being some distance above the mouth of the river, & above the thirty second parallel. We here see that the boundary of Lower California on the east is stated to be the Vermillion sea. Let us then see whether Upper California is stated by him to have this same Gulf for a part of its eastern boundary. It is bounded, on the north by the Oregon Territory, on the South by old California, on the east by the *Rocky mountains*, on the West by the Pacific Ocean" (v. 1. p. 316). No mention here, of the Gulf of California.

Thus much, in regard to the *beginning* of this division line. It remains to ascertain where it runs & how it terminates. Thus far, we have seen that the delineation of boundary which I am required to insert in the treaty, assumes, as an ascertained & settled fact, that this division line begins on the Gulf shore, some distance above its head. This fact is denied, & we have seen a part of the evidence which may be adduced in support of this denial. The delineation assumes also, as a part of the same ascertained & settled fact, that the line so commencing is a "due west" line, "running north of the parallel of 32°, & South of San Miguel". In regard to *San Miguel,* I have stated the probability that the true position of this place is such, that no line running north of the thirty second parallel *can* run south of San Miguel. In regard to the line's "running north of the parallel of 32°", we have seen a part of the evidence on which rests the probability that *no* line beginning on the Gulf shore can run otherwise than south of this parallel

As modified by striking out the words "*north of the parallel of 32°, &*", the delineation of boundary, from the mouth of the Gila, would stand thus: "thence down the middle of the Colorado, & the middle of the Gulf of California, to a point directly opposite the division line between Upper & Lower California; thence due west along the said line, which runs south of San Miguel, to the Pacific Ocean".

Now, in regard to this last point also, the correctness of the implication is denied on the part of Mexico. She avers, that, independently, of all the other objections to this delineation, "the division line between Upper & Lower California" does not, & never did, run south of San Miguel.

How, then, does this line run on its way from the Colorado to the Pacific, & where does it strike that Ocean? In the first place, it appears, that no *line* of division ever was established between the two Californias, either by describing it, or by tracing it upon the map. That is to say, no such *line* ever was authoritatively established, by any act of the Government, either in old times or in the more

[1] For the correct location of the Santa Catalina Mission, some twenty-five miles to the south of the 32d parallel, see the folded map in Meigs, The Dominican Mission Frontier of Lower California.

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recent. The Mexican Commissioners have diligently searched into this subject, & their researches have been fruitless. The authorities, however, do not vary as to the fact that Lower California consists of the Peninsula, the whole Peninsula, including a passage by land from Sonora, across the Colorado; this river, as appears from the old narratives, being crossed *by fording*.

The oldest authority on the subject is the posthumous work of Clavigero, published at Venice in 1789, under the title, "History of California". There was then but *one* California, which one afterwards, upon the establishment of Missions & posts, in the then unexplored region, to the north, came to be distinguished as the *Old*. In the map attached to this work, the port of San Diego is included. The description runs, California is a vast peninsula of North America, which &ᵍ &ᵍ "*& the Port of San Diego*, situated at 33° Latitude 256 Longitude, may be called its western limit. On the northwest & north it is bounded by countries of entirely barbarian nations" &ᵍ &ᶜ. The ports most known on this coast (the western) are those of El Marques, or Santiago, La Magdalena", &ᵍ &ᵍ "*& San Diego*"

The result of the investigation (a very hasty one) which I have been enabled to make of this subject is to satisfy me that the probability is very strong that no *line* of division, no *definite limits* between the two Californias has ever been established; and also to furnish me with a satisfactory explanation of the origin of the impression which has come to prevail, as to where Old California ends and New California begins: which explanation serves to show how far that impression is definite, & rests upon precise grounds, and how far it is in its nature vague; and likewise to show how Geographers and map-makers have been led into the error of proceeding upon the assumption that such a line has been established, and into the error also of laying it down in a manner that disregards a *portion* of the facts—of the contestible facts—relating to the subject.

The "Map of California" (that is, of *Old* California) attached to Clavigero's work by the Editor, is stated by him to have for its basis, those comprised in a work, under the title of "Notices of California", published at Madrid in 1757. This map, as above stated, includes the Port of San Diego; & it includes also the Mission of San Giacomo Gualberto, situated inland, a little north of the parallel of that port, about two thirds of the way across from the Pacific to the Colorado, & about midway from the mouth of that river to where the Gila empties into it.

The Port of San Diego, however, came afterwards to be considered as the place where *New* California begins, and as included in it; and this was owing to the following circumstance. The expulsion of the Jesuits from Mexico took place in June 1767; and, from California;—(which had been settled by their zeal & perseverance, & where, in the course of seventy years, they had established fourteen flourishing Missions) early in the following year: their Missions being left in the charge of soldiers, until they could be taken possession of by priests of the Franciscan order who were to replace the Jesuits.

These details form the necessary introduction to the circumstance referred to, which was this: Simultaneously almost with the expulsion of the Jesuits from California, that is, early in 1768, the Court of Spain, apprehensive of the founding of settlements in that quarter by other European powers, despatched orders to the Viceroy of Mexico, to establish Missions and military posts at the posts of San Diego & Monterey; which order as regards the former was carried into effect the following year, 1769: the Mission being established by Franciscans who had succeeded to the Jesuits in the exclusive controul of that region. Two years afterwards, "the Dominicans of Mexico obtained a royal order, requiring "the Franciscans to surrender to the former the administration of one or two "Missions. The Father Director of the college of San Fernando caused to be "observed with reason, that the province of Lower California could not be "divided, that its natural limits were perfectly traced, that serious inconvenience "might result from two Orders being established, in competition with each other, "upon the same territory. He concluded by offering to the Dominicans, in case "they should see fit to take charge of the entire province, from cape San Lucas" (the southern point of the Peninsula) "up to the port of San Diego *exclusively*, "to cede to them, together with all the Missions previously administered by the "Jesuits, that of San Fernando de Vellicata; and the five others yet to be founded. "The Viceroy assembled the Council, and, on the 30ᵗʰ of April 1772, he rendered

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"a decree to carry into execution the agreement between the two prelates. It "was, however, not until the 1st of May of the following year, that the Domini- "cans entered into definite possession of Lower California, and that the Fran- "ciscans withdrew into the New; where, being enabled to concentrate all their "efforts upon a territory less vast & more fertile, they soon obtained results "worthy of admiration."

This is the account of the matter given by De Mofras, (vol. 1. p. 260) and it shows how the port of San Diego came to be "*excluded*" from Old California. The statement bears upon its face a derivation from authentic sources, so far as regards the partition whereby the Franciscans, on the pretext of the inconvenience of having two orders within the same province, and of "*natural* limits" which excluded the Port of San Diego from Old California, contrived to retain for themselves the terrestial paradise which they knew commenced at that point; whilst the burthen of maintaining the old Missions, situated in the arid desert which the Jesuits had toiled in, was shifted to the shoulders of the Dominicans. With respect to the origin of this partition, however, Clavigero, who was a contemporary, gives an account which differs from the above, and brings into bold relief the motive of the Franciscan father for finding the "*natural* limit" of the Peninsula just *south* instead of just *north* of San Diego. Clavigero, citing letters from Mexico, says, "No sooner had the new Missionaries (the Franciscans) seen "with their own eyes, that California was not what they had believed it to be, "than they abandoned the Missions and the Peninsula, & returned to their "convents" (in Mexico) "publishing every where, that the country was un- "inhabitable, and that the Jesuits ought to be very grateful to the King for "having extricated them from that great misery. Some priests & friars afterwards "went there; but they not being able to subsist in that country, Dominicans "were sent to it from Spain."

Agreeably, therefore, to this "agreement between the two prelates", (which constitutes, so far as I can discover, the only existing basis for *any* demarcation between Lower & Upper California) the older of the two provinces extended up to *some* point on the Pacific, which excluded the port of San Diego from its limits. The next question is, how does the line run from that point across to the Colorado?

There is no probability whatever, that any such line was ever run, or determined in any way. The only basis for running it now would consist in ascertaining the extent of territory comprehended within the two northernmost, (one on the Pacific, the other inland) of those "five other" missions "yet to be established", which became founded by the Dominicans, under the compact between them & the Franciscans. I say, the extent of territory comprehended within those missions, because a "Mission" consisted of the *establishment*, as a nucleus, & the territory attached thereto; which territory was sometimes was very extensive. "The Missions" collectively, are always spoken of as constituting the *entire* province; the sum total of the population of the entire province is always made up by adding together the numbers of inhabitants of the respective missions. The probability is, that the two missions in question were those of San Miguel (on the Pacific) & Santa Catalina, whose position inland has been described above. Both are mentionend by De Mofras as being within Lower California; they are also included in his table of the missions of that province.

In regard to the precise geographical position of San Miguel, (considering this with reference to the possibility of a line running north of the 32d parallel being south of that spot) we have seen that De Mofras mentions this mission (that is to say, the *establishment* or nucleus,) as being upon that parallel. Humboldt, in his enumeration of the missions of New California, "proceeding from south to north" gives San Diego as the first, and states it to be "*fifteen* leagues distant from the northernmost mission of Old California". The probability is great, that the northernmost mission here referred to is San Miguel. Now, taking the latitude of San Diego to be 32°44′59″, (thus stated in the Secretary of State's despatch to me of July 19. 1847, as having been accurately ascertained by Majr Emory) "fifteen leagues" measured from that point would put San Miguel just one second south of the 32d parallel. (It may be a necessary caution here to remark, that Humboldt mentions a mission of the same name—"San Miguel"—as being among

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those of New California. But that mission is far to the north of San Diego, being the tenth in order, commencing with the latter.)

This suffices to show, 1st That without reference to any thing else than geographical facts, it would be, to say the least, unsafe to describe an international boundary as running south of San Miguel, and north of the 32d parallel. 2nd That, as a question between Old & New California, it is certain that the Mission of San Miguel, (whatever the precise latitude of its nucleus may be, that is, the convent & dependent establishment) belongs to the Old, & cannot be considered as comprehended within any claim to the New. 3rd That, whether the convent be situated north or south of the 32d parallel, it is evident from all that preceeds, that the *territory* comprehended within that Mission (& consequently forming part of Old California) cannot but extend "up to" the very near neighbourhood of "the port of San Diego"; while it is not at all impossible, but it may extend "up to" the very shore of that bay.

Humboldt, it is true, commences his chapter upon New California as follows: (I translate from a spanish translation) "In the spanish maps, the name of "*New California* is given to the whole coast of the great ocean, extending from "the isthmus of Old California, or from the Bay of *All Saints* (to the south of "the port of San Diego) up to Cape Mendocino". This, on the face of it, is a mere *general* description. The reference to the "spanish maps" evinces an uncertainty in regard to the existence of other grounds, upon which to found a more precise statement of the point of beginning. The expression "from the isthmus", "*or* from the Bay" &c, prove either that he had found those maps to disagree, or that they all left it uncertain, as to *the precise point* on the coast, where old California was to be considered as ending & the New as beginning. This question, he found decided by those maps with sufficient accuracy for the purpose, the *general* historical & geographical purpose, which he had in view. In examining it, & giving the result of that examination, he was not acting as an international *arbiter* upon this question; he was not dealing with it as a point upon which hinged the continuance or discontinuance of a war between two nations: the one of said nations demanding, as a condition to the restoration of peace, to retain the whole of *Upper* California, but asking no part of *Lower;* and the point to be decided being, therefore,—where does the territory terminate which is embraced in that demand? The general and vague statement here made by Humboldt had reference to no such question as this; and the fact that it had not, is a consideration not to be lost sight of, in forming a judgment as to the weight due to his dictum upon this point.

The result to which I have been brought is, to propose that a division line between the two Californias shall be now *established*, as running from the mouth of the Gila to a point on the Pacific one league due south of the southernmost extremity of the port of San Diego.[1]

In the earlier negotiations of August and September 1847, Trist had made no more than a formal effort to obtain Lower California for the United States; and in December 1847 and January 1848 he

[1] The three works cited by Trist in this memorandum are these:

Eugène Duflot de Mofras. Exploration du territoire de l'Orégon, des Californies et de la Mer Vermeille, exécutée pendant les années 1840, 1841 et 1842, par M. Duflot de Mofras, attaché à la Légation de France à Mexico; ouvrage publié par ordre du Roi, sous les auspices de M. le Maréchal Soult, Duc de Dalmatie, Président du Conseil, et de M. le Ministre des Affaires Étrangères. Paris, Arthus Bertrand, 1844. 2 vols. and atlas.

Francisco Javier Clavijero. Storia della California; opera postuma del nob. Sig. Abate D. Francesco Saverio Clavigero. Venezia, M. Fenzo, 1789. 2 vols. in 1.

Alexander, Freiherr von Humboldt. Ensayo politico sobre el reino de la Nueva-España, por Alej. de Humboldt; traducido al español, por Don Vicente Gonzalez Arnao, con dos mapas. Paris, Rosa, 1822. 4 vols.

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did not make even a suggestion to that effect; moreover, Trist had come to interpret his instructions as meaning that the portion of the treaty boundary involved should be that already fixed between Upper and Lower California (if this could be determined), regardless of where that line ran and, in particular, regardless of whether it left San Diego within or without the territory of the United States.

So in his memorandum Trist discusses the location of the eastern and western termini of the boundary separating the Californias, the line from one to the other of the termini, and various geographical questions more or less directly connected therewith and with his instructions.

As to the eastern terminus, Trist points out that by Disturnell's Map it is on the Gulf of California, so that adopting it, according to his instructions, "would give us the *whole* of the right bank of the Colorado down to its mouth & moreover about 15 miles of the Western coast of the Gulf of California below the mouth of the river"; but the latitude of that terminus as fixed by the map is just north of the 32d parallel; this is erroneous, as the true latitude is, according to Mofras, about 31°30′; so the instructions (since they were based on Disturnell's Map) are to be disregarded, insofar as they mention fixed points, but accepted as to the figure of the parallel; the map is a "mere speculation of an Engraver or bookseller"; the line *must* be north of 32°. This argument is supplemented by reference to the available authorities, who indicate that the eastern end of the California line is about at the confluence of the Gila and Colorado. This point, then, is taken for the eastern terminus; and the "remedy" of a "place of deposit, one league square", on the right bank of the Colorado, below the Gila, is put forward, but not as a *sine qua non;* and while the memorandum does not so state, for this square league Trist offered to give the southern part of San Diego Bay.

For his discussion of the terminus of the boundary on the Pacific, Trist relied chiefly on the account of Mofras as showing that San Diego was "excluded from old California" in 1772–73; and the instructions that the line should run "north of the parallel of 32° and South of San Miguel" are laid aside because of (*a*) the probability [1] that San Miguel is not north of the stated parallel and (*b*) the conclusion [2] that San Miguel, whatever its correct latitude, is within Lower California. The "result", as summed up by Trist in the final paragraph of his memorandum, is the establishment of a division line between the two Californias to run from the mouth of the Gila to a point on the Pacific one league south of the southernmost extremity of the port of San Diego; and this became the treaty boundary.

[1] It was in fact geographically possible to draw the line as stated in the instructions, north of the 32d parallel and south of San Miguel; Misión Vieja, or the Mission of San Miguel Arcangel, is about six miles north of that parallel and about thirty miles south of the Pacific terminus of the treaty boundary; see the folded map in Meigs, The Dominican Mission Frontier of Lower California.

[2] This conclusion was correct; see Meigs, *op. cit.*, 111–13.

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As has been seen, Trist, after a too cursory and casual consideration of the authorities, had, on January 4, accepted the view that San Diego was in Lower California; in his unfinished memorandum written during the evening of that day both Mofras and Humboldt are cited in support of that opinion, although each of those writers is to the contrary; and Trist's boundary proposal of January 5 was framed in accord with the erroneous conclusion which he had reached. By January 7 Trist had learned that San Diego was in Upper California; and his insistence then and thereafter that the line to the Pacific should not run north of that port was founded on his knowledge of that fact.

How that knowledge was acquired between the Tuesday and the Friday is, at least in part, very interestingly indicated by four pieces in the Trist Papers. The first to be mentioned is this unsigned and undated [1] memorandum of Thornton (Trist Papers, 30:61617–18), which includes an excerpt from a Spanish edition of Humboldt of the sentence which Trist quotes, translated from the Spanish in his memorandum of January 7:

In the Map published by the society for the diffusion of useful knowledge in 1842, San Diego is at 32°50′, San Miguel at 32°, Cape All Saints 31°40′, & the Mouth of the Colorado 32°.

M Duflot de Mofras puts San Diego at 32°.

In a Map of Upper California in the "United States' Exploring Expedition by Charles Wilkes U.S.N. in 1845" San Diego is laid down at 32°55′, and the boundary line at 32°15′. San Miguel is not mentioned, though the map just includes the line of 32°:

Ensayo Politico de Humboldt:

"En las Cartas Españolas se llama Nueva California toda la costa del grande Oceano, que corre desde el Istmo de la Vieja California, ó desde la Bahia de todos los Santos (al Sur del Puerto de San Diego) hasta el Capo Mendozino."

McCulloch's Geographical Dictionary says:

"Upper" California lies between 32° & 42°."

Two books which I have been unable to find, but which are likely to say something on this matter are "D^{r}: Pomposo Fernandez sobre Baja California", & "Los tres siglos de Mejico (Malaspina y Von).

The Manuscripts mentioned by Humboldt, & supposed still to exist in the "Archivo General" in the National Palace at Mexico are:

1° Cronica Historica de la Provincia de Michoacan con varios Mapas de la California.

2°. Cartas Originales del P. Juan Maria de Salvatierra.

3°. Diario de Capitan Juan Mateo Mangi, que acompañó á los PP. apostólicos Kino y Kappus.

The Archivo General was kept in a room on the Ground floor of the Palace, on the right hand side as you go in by the door nearest the Market Place (in the Plaza).

The second indicatory item is the following memorandum of latitudes written by Captain Robert E. Lee, U.S.A., at the request of Trist (*ibid.*, 29:61334 and endorsement); this paper is unsigned and undated but cannot have been of later date than January 7 (the en-

[1] The date interrogatively assigned by the compiler of the Trist Papers to this memorandum is April 5, 1848; but its true date must be approximately, and not later than, January 7.

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dorsement has the month and year only); it was obviously the basis of Trist's statements regarding the latitude of San Miguel:

S. Miguel according to Disturnells map of 1846 is 32°18′, Lat.
" " Tanners map of 1846 32°19′
S. Diego according to Disturnells map of 1846 is 32°55′
" " Tanners map of 1846 32°57′45″
S. Diego according to the observations of Vancouver & Malaspina is in Lat. 32°39′30″
if then S. Miguel is 37′ South of S. Diego, as the above maps would shew, it must be very near 32°. But Malaspina gives the latitude of the Island of San *Martin*, which I take to be the island just north of S. Miguel, 32°25′10″
Mascaro gives the latitude of the Passo del Norte (Presidio) as 32°9′0″
Diaz & Font, the junction of the Rio Gila & Colorado 32°45 0
Font the Casas Grandes (near the Rio Gila) 33 30 0

The third of the four papers, undated but marked as received on January 7, 1848, is this very brief but equally significant communication (*ibid.*, 28:61052):

Mr Trist You will see that I was mistaken—it is in Northern California
Yours sincerely

Persifor F. Smith

That the "it" of the writer is San Diego, there can be no possible doubt whatever; Brigadier General Smith previously had also thought San Diego to be in Lower California; he sends word of his mistake; and there must have been some enclosure or accompaniment to the letter, a book or map or paper, from which Trist was to "see" where San Diego in fact was located.

Finally, there is this letter from Couto to Trist, dated and marked as received on January 7, 1848, and written before the conference on that day (*ibid.*, 28: 61054–55, translation, omitting the formal conclusion):

The Mofras that Mr. Trist was good enough to request of me yesterday is sent herewith.

Last night, while I had it in my possession, I leafed through it rapidly, and I find that it allocates the whole District of San Diego to New California. To make this agree with what the said Mofras prints in the first map of the atlas, I believe that it is necessary to assume that that district begins at the town from which it takes its name and that it extends entirely in a northerly direction. And in fact the other towns which, according to that writer, make up the district, San Luis, San Juan Capistrano, etc., all lie in that position.

I also consulted Humboldt's text (as Mr. Trist recommended to me the day before yesterday), and I find that he places San Diego in Upper California; I am transmitting the pertinent volume. Perhaps that traveler followed some political demarcation already established in his time; and Clavijero followed the geographical configuration of the peninsula. On that hypothesis, both writers would be right.

I also noted yesterday that although Humboldt locates the town of San Diego (I mean, in the atlas) on the coast of the bay of that name; on the map[1] engraved at New York it is assumed that there is a space of land between that coast and the town, which space might be more than the marine league of which we have spoken. That would be contrary to our ideas.

I would be very sorry indeed if Mr. Trist or ourselves should take as a basis any mistaken datum. My desire is that a negotiation, conscientiously pursued

[1] I.e., the Disturnell Map.

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and in which the truth may (as far as possible) be established, may prepare a firm and lasting peace for us. If Mr. Trist believes that these new data render any point doubtful and that before we have finished writing our draft it ought to be cleared up by means of another conversation, we shall be ready to hold it now in the morning at such hour as he may be pleased to set.

When the foregoing letter of Couto was written, the latest draft of the boundary article was that of Trist of January 5, whereby the line was to reach the Pacific one league north of the northernmost point of San Diego Bay. Referring to the Disturnell Map, Couto points out that thereon the town of San Diego is located at a greater distance than one league north of the bay. His suggestion is that, if the Disturnell Map is correct in this regard, the line should be drawn so as to leave both the bay and the town south of the boundary, as in the Mexican proposal of January 3 ("two or three leagues north of the port of San Diego").

In the report of the Mexican Commissioners to their Government dated March 1, 1848, the latitude of San Diego and also that of the confluence of the Colorado and the Gila are discussed, with citation of various authorities, official and other; that San Diego had always belonged to Upper California is said to be undisputed ("sin controversia"); and there is this paragraph on the boundary between the Californias (Exposición, 237–38, translation):

We do not know whether the public authority, either under the Spanish Government or under the independent Government, has at any time traced a complete dividing line between the two Californias; but we believe that we can state with assurance that the Jesuit missionaries of Lower California never established any settlement at San Diego or in its immediate neighborhood; that even in the year 1793 the most northern mission of Old California was that of Santo Tomás, situated at 31°32′; that the mission of San Diego has always been counted as the first mission of New California, as founded by Father Serra in the year 1769, two years after the expulsion of the Jesuits; and, finally, that geographers, such as Baron von Humboldt, divide the two Californias still lower down, that is to say, in Todos Santos Bay.

That report of the Mexican Commissioners was written for publication and as a defense and justification of the treaty; it naturally did not contain any allusion to the boundary proposal made by Trist on January 5, whereby the line would have run north of San Diego.

The material before Trist which was relevant to the question of the historic line between the two Californias was incomplete and in part erroneous; and Trist's reasoning therefrom was biased. The following discussion of the subject is taken from the learned account of Peveril Meigs, 3d, in The Dominican Mission Frontier of Lower California (pp. 3, 111–13, and the folded map), and the works cited therein.

That historic boundary was first defined in the concordat signed at Mexico City April 7, 1772, as one between Franciscan (Upper California) and Dominican (Lower California) territory (for a translation of that concordat, its approval by the Council of War and Royal Exchequer at Mexico City on the following April 30, etc., see

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Bolton, Palóu's Historical Memoirs of New California, I, 234–55); and that definition was officially accepted by the Council of the Indies on May 11, 1775, "expressed by the latter in somewhat ambiguous terms. The Dominicans were to proceed *hasta llegar a los confines de la Misión de S^n. Diego en su Puerto, poniendo la última en el Arroyo de S^n. Juan Bautista* [San Miguel Mission] *q^e. finalizaría cinco leguas mas adelante de una Punta que saliendo de la Sierra Madre, termina antes de llegar á la Playa, donde podrían torcer al Leste con poca inclinación al Les-Nordeste con q^e. salían al fin del Golfo Californico y Río Colorado*" (Meigs, *op. cit.*, 3, 111; Chapman, The Founding of Spanish California, 118, note 59); this may be rendered: "until they reach the frontiers of the Mission of San Diego on its port, placing the last [mission] on the arroyo of San Juan Bautista, which would terminate five leagues farther on with a peak which, coming from the Sierra Madre, ends before reaching the coast, whence they may turn to the east, slightly northeast, and so proceed to the end of the Gulf of California and the River Colorado". On August 19, 1773, that boundary was marked near the coast with a cross by the Franciscan padre, Francisco Palóu, "five leagues [1] distant from the Arroyo of San Juan Bautista and about fifteen from the port of San Diego" (see Bolton, *op. cit.*, I, 300–2) and "overlooking Médano Valley on the south side" (Meigs, *op. cit.*, 112; see Hendry, "Francisco Palóu's Boundary Marker", in California Historical Society Quarterly, V, 321–27). In 1788 "the boundary was shifted fourteen miles north from Médano Valley to the Arroyo del Rosarito (Rosarito Creek [2]), where it remained until the present international boundary was agreed upon, and must therefore be considered the real northern boundary of the Dominican territory" (Meigs, *op. cit.*, 113); but that change of 1788 was not, it seems, an alteration of the line for its whole extent but only for a short stretch of a few miles, beginning at the coast (see *ibid.*, the folded map); and it appears that the line described not only marked the division of ecclesiastical jurisdiction, but was also, from 1806, a military and political boundary as well (Hittell, History of California, I, 607–8). There is no definite evidence of any subsequent shifting of the line, although it was variously drawn from time to time by makers of maps; so the line first established in 1772–75, with the modification of 1788 at and near the coast, may be deemed to have been the true boundary between Upper and Lower California prior to the Treaty of Guadalupe Hidalgo.

Transmittal of the Treaty

The first originals of the treaty and the additional and secret article were transmitted immediately after signature with the following despatch of February 2, 1848 (D.S., 14 Despatches, Mexico, No. 28):

[1] A league, *legua*, was 2.6 English miles (see Meigs, *op. cit.*, 165). The distance as the crow flies was actually about ten miles.

[2] About fourteen miles south of the treaty line.

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I transmit herewith, the Treaty of Peace, Friendship, Limits and Settlement, signed one hour ago at the City of Guadalupe; a spot which, agreably to the creed of this country, is the most sacred on earth, as being the scene of the miraculous appearance of the Virgin, for the purpose of declaring that Mexico was taken under her special protection.

During the negotiation—which has been an exceedingly laborious one, and has kept me closely employed for several weeks past, during every day & night, for as many hours as I could possibly give to labour—I have written many notes which would serve as an explanation of the Treaty in all its stipulations; and I have also written a long despatch on the subject. But it has proved impossible for me to find time to copy these papers, or to get them copied, for transmission. They will go some days hence, with the duplicate of the Treaty. Meanwhile this must speak for itself.

It will be delivered to you by Mr James L. Freaner, the correspondent of the New Orleans Delta, who has given such celebrity to the signature of "Mustang". For a service of this kind, he would be my first choice, by far, of all the men whom I have ever known; as he would be among the very first for any service which a man may be qualified for by high integrity of character, strong manly good sense, extraordinary sagacity and presence of mind, perfect fearlessness, and many other noble qualities; all united with a frame of steel & the sinews of a mountain deer. He had made his arrangements for leaving this place, on his return to the United States, with the train, which I had myself intended to accompany, and which set out from hence on the ninth of December last. Aware of his great value in such a capacity, at a juncture like the present, when the loss of a single hour might be attended with consequences the most momentous, I obtained his consent to remain here, with a view to the contingency which has occurred. I consider him, therefore, as having been in the employment of the Government as a special Bearer of Despatches, from the 9th of December. As generous & disinterested in his disposition, as he is brave and upright, he would be perfectly content with the consciousness of having been useful to our country, without any other reward; but I have told him that I should insist upon this matter's being placed upon the footing just stated.

With respect to the ratification of the Treaty, I believe the chances to be very greatly in its favour; although it cannot be counted upon in less than two months from the date of the proclamation which will be issued by the Executive summoning the new Congress. The elections have not yet been held in the States of Vera Cruz and Puebla. In the former, the Puros (war party) never had any strength whatever; and in the latter, not enough to counteract a vigorous and concerted effort on the part of the Moderados. These elections will now speedily take place, under the arrangements for facilitating them which will be entered into in pursuance of the 2^{d} Article of the Treaty; (inserted with a special view to this object) and the result will, according to every probability, give to the Peace party in Congress a preponderance so decided as to ensure its prompt ratification

James L. Freaner, the bearer of the treaty (the first original) made the journey from Mexico City to Washington in seventeen days, a remarkably short time under the circumstances; his plans were formed in advance; at six points between Mexico City and Veracruz he was to have "a change of horse and escort", so as to complete the ride in less than three days (Trist Papers, 28 : 61166, January 18, 1848). The distance by the road traveled was about 250 miles; the route followed is marked in orange on the inset map in the lower left-hand corner of the Disturnell Map; and there is a profile of the route just to the right of the inset.

The second original of the treaty, which Trist called "the duplicate", was sent with the despatch dated January 25 (D.S., 14 Despatches, Mexico, No. 27, heretofore quoted in part); that despatch,

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however, did not go forward until February 9; and the authenticated Disturnell Map and the authenticated Plan of the Port of San Diego, mentioned in Article 5 of the treaty, were transmitted with the following despatch of February 12 (*ibid.*, No. 29), the final communication of Trist to the Department of State:

I transmit herewith the maps referred to in the Fifth Article of the Treaty of Peace, Friendship, Limits & Settlement between the United States & the Mexican Republic, which was signed in Quintuplicate on the 2d inst, and despatched immediately after. The Duplicate of the Treaty was transmitted on the 9th, together with my despatch Nº 27, which had been written in the days immediately preceding the signature of the Treaty, but which it had proved impossible for me to get copied out for transmission, or to find time for copying myself. The same remark still applies to enclosures A & B of Nº 27; although it went accompanied by its enclosure C.

I take great pleasure in stating that the probabilities of the ratification of the Treaty by Mexico, which were previously very good, have been becoming stronger & stronger ever hour for several days past, and that there is good reason to believe that it may take place within two months from its date.

In the accompanying "Monitor Republicano" of the 11th inst. will be found the circular of the Minister of Relations to the Governors of States informing them of the signature of the Treaty.

Disturnell's Map

By Colonel Lawrence Martin, Chief of the Division of Maps, Library of Congress

In the second paragraph of Article 5 of this treaty, mention is made of two maps added to the treaty and signed and sealed by the Plenipotentiaries of the United States of America and the United Mexican States. The first of these is Disturnell's Map of Mexico; the second is Pantoja's Plan of the Port of San Diego. The former is referred to in the English version of the treaty as "the Map, entitled '*Map of the United Mexican States, as organized and defined by various acts of the Congress of said Republic, and constructed according to the best Authorities. Revised Edition. Published at New York in 1847 by J. Disturnell:*' of which Map a Copy is added to this treaty, bearing the signatures and seals of the Undersigned Plenipotentiaries". The map is referred to in the Spanish version in the same general terms, and the title of the map is given in Spanish, including a translation of the English words "Revised Edition".

As no less than seven editions of Disturnell's Map were published at New York in the year 1847, as all seven bear both that date and the designation "Revised Edition", and as all seven have the very same title, it is important to identify with precision the exact editions of Disturnell's Map which were used in connection with the negotiation and ratification of the Treaty of Guadalupe Hidalgo.

The fact of translation of the title of this map in the English version of the treaty is unfortunate, for there never was a map by Disturnell bearing the English title specified in the treaty; but there is a map, also published at New York, whose title closely resembles that specified in the treaty. The two titles are given below:

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Title specified in the English version of the Treaty of Guadalupe Hidalgo.— "Map of the United Mexican States, as organized and defined by various acts of the Congress of said Republic, and constructed according to the best Authorities. Revised Edition. Published at New York in 1847 by J. Disturnell".

Title of Tanner's map which was not used in the negotiation of the treaty.—"A Map of the United States of Mexico, As organized and defined by the several Acts of the Congress of that Republic, Constructed from a great variety of Printed and Manuscript Documents, by H. S. Tanner. Fifth edition, 1847."

Obviously a map published in 1847 as the "Revised Edition" is different from a map published in 1847 as the "Fifth edition", and a map by J. Disturnell should not be mistaken for a map by H. S. Tanner. Nevertheless, confusion might have arisen if the Plenipotentiaries of the United States and of Mexico had not added copies of Disturnell's Map to the treaty.

The striking resemblance in the titles of the two maps is by no means accidental, for Disturnell's Map is a reprint of the first of two independent plagiarisms of Tanner's. Hence the likeness and the differences in the two English map titles given above are due to the fact that the title in the treaty had been translated from English into Spanish and back again into English.

The actual title of Disturnell's Map and the slightly errant wording of it in the Spanish version of the treaty are given below:

Title specified in the Spanish version of the Treaty of Guadalupe Hidalgo.— "Mapa de los Estados-Unidos de México, segun lo organizado y definido por las varias Actas del Congreso de dicha República y construido por las mejores autoridades: Edicion revisada que publicó en Nueva-York en 1847 J. Disturnell".

Title of Disturnell's Map which was used in the negotiation of the treaty.— "Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The Spanish version of the treaty errs not only in the fact of translating the only two words which are in English in the title of Disturnell's Map, the words "Revised Edition", but also in the spelling of Méjico, in minor matters of punctuation and capitalization, and in the order of mentioning Disturnell's name, the date, and the edition. There never was an edition of Disturnell's Map which included in its title the Spanish words "Edicion revisada" or the spelling "México".

Moreover, there is still another map, entitled "Mapa de los Estados Unidos Mejicanos", which is said to be based upon acts of the Mexican Congress, but it was published ten years before Disturnell's earliest 1847 edition, and at Paris rather than New York.

Since Disturnell printed at least twenty-three editions of the map of Mexico, seven of them in 1847, since it is a reprint of an earlier map by White, Gallaher & White, since that map is a bold plagiarism of a map of Mexico by H. S. Tanner, since that map in turn is taken literally from the southwestern part of a map of North America by Tanner, and since there has been a certain amount of perplexity concerning the edition we call Disturnell's treaty map, it appears convenient and desirable to record briefly the history of the successive

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editions of all four maps in order to place the Disturnell maps of 1847 in their proper setting, as well as to enable those interested to identify the treaty maps with certainty. Actually there were two treaty maps rather than one.

TANNER'S MAP OF NORTH AMERICA

In 1822 H. S. Tanner published "A Map of North America, Constructed According to the Latest Information". The State names "Cohahuila" and "New Santander" are lettered astride the Rio Grande, since these subdivisions of the former Intendencia of San Luis Potosí appear to have terminated at the Rio Nueces rather than at the Rio Grande. The boundary between Upper California and Lower California is a hand-colored northeast-southwest line from the mouth of the Rio Gila to El Rosario on the Pacific coast some 150 miles south of San Diego. Tanner issued new editions of this map in 1829 and 1839 and perhaps in other years. The 1822 edition of the map was included in the 1823 edition of Tanner's New American Atlas. The geographical memoir at the beginning of that atlas specifies the sources of the several maps. The Mexican portion of the map of North America was based upon Pedro Walker's "Map of New California", Alexander von Humboldt's "General Map of the Kingdom of New Spain", Z. M. Pike's "Map of the Internal Provinces of New Spain", the same author's "Chart of the Internal Part of Louisiana", William Darby's "Map of the Southern Part of the Province of Texas", Bernardo de Orta's "Plan of the Port of Vera Cruz", and Juan de Langara's "Chart of the Gulf of Mexico" (*loc. cit.*, 8–10). In view of the subsequent dispute concerning the latitude of the southern boundary of New Mexico, it is interesting to observe that the latitude of "Paso" on the Disturnell Map is nearly the same as the latitude of this place on the Humboldt map and the Tanner maps. Humboldt, however, placed the southern boundary of New Mexico even farther south than Disturnell.

TANNER'S MAP OF MEXICO

In 1825 Tanner took the southwestern portion of his map of North America and made it the basis, and practically the sole and literal basis, of a map of Mexico. The scale was enlarged, that of the map of North America being 1 inch to about 120 miles and that of the map of Mexico, 1 inch to about 84 miles. The map was reoriented on a new central meridian. All the descriptive notes printed upon the face of the trans-Rocky Mountain and Mexican portions of the map of North America, appear on the map of Mexico.

Between 1825 and 1847 Tanner brought out at least ten issues of one or another of five editions of his "Map of the United States of Mexico". The several issues thus far identified all have the same title. They bear the following dates and designations: (*a*) 1825; (*b*) 1826; (*c*) [an impression of the second edition, copyrighted April 2, 1832]; (*d*) 1834, Second edition; (*e*) 1838, Second edition; (*f*) 1839, Second edition; (*g*) 1846, Second edition; (*h*) 1846, Third edition;

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(*i*) 1847, Fourth edition, and (*j*) 1847, Fifth edition. The copy in the Library of Congress of the one designated "1846, Second edition" belonged to President Millard Fillmore and bears his autograph and the date May 21, 1846, suggesting that that was the date he purchased it and that the map designated "1846, Third edition" may have been published after May of that year. Beginning with the edition last mentioned, the Tanner maps bear an engraved boundary between Upper California and Lower California which extends in a northeast and southwest direction from a point on the west bank of the Colorado River opposite the mouth of the Gila River to a point on the Pacific Ocean near "Pt Mondrains", some 120 miles south of San Diego. Before that date they all have a hand-colored line in the same position, except on Fillmore's copy, which indicates the boundary by color on the parallel of 32° north latitude. This particular copy of Tanner's map of Mexico is probably without historical significance because Fillmore was no longer a member of Congress when he acquired it and was not then in office; he was, however, interested in the Mexican War, since he had at least four other maps of Mexico showing battles there. In 1848 Fillmore was elected Vice President of the United States on the ticket with General Zachary Taylor; and in 1852, as President of the United States, Fillmore took an important action which has to do with Disturnell's Map.

The 1822 edition of Tanner's map of North America and the 1825 edition of Tanner's map of Mexico evidently derived the southern boundary of New Mexico directly from the one on Baron von Humboldt's map of New Spain published in 1809. In the 1826 edition of his map of Mexico, however, Tanner deleted the southern boundary of New Mexico west of the Rio Grande and replaced it by a new boundary which is about 8 miles farther north in the western part and 80 miles farther north in the eastern part. It is this latter boundary which was reproduced by White, Gallaher & White in 1828 and by Disturnell in 1846 and 1847.

All the Tanner maps of Mexico from 1825 to 1847 are copyrighted. They are chiefly important because they represent the original source of Disturnell's Map.

ROSA'S PLAGIARISM OF TANNER'S MAP OF MEXICO

An independent plagiarism of Tanner's map of Mexico was Rosa's "Mapa de los Estados Unidos Mejicanos Arreglado a la distribucion que en diversos decretos ha hecho del territorio el Congreso General Mejicano", published at Paris in 1837. This map was brought into the argument concerning the boundary marking in 1853. It is a literal copy of Tanner's map, taken from the 1834 edition on the original scale and translated into the Spanish language. The essential respects in which Rosa's plagiarism differs from Tanner's map of Mexico are three in number: (*a*) the statistical table in the Gulf of Mexico is omitted; (*b*) in the table of distances, the village of Cordova is replaced by the village of Ayotla, but the distance from Mexico City is not modified; (*c*) the hand-colored northeast-southwest

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boundary between Upper and Lower California on Tanner's 1834 map is replaced by an engraved boundary in the same position on Rosa's 1837 plagiarism. Another edition of Rosa's map was printed in 1851. The Rosa maps of 1837 and 1851 are not to be confused with another plagiarism of Tanner's map which had already been printed at New York. This is next to be described.

WHITE, GALLAHER & WHITE'S PLAGIARISM OF TANNER'S MAP OF MEXICO

In 1828, two years after Tanner published his 1826 map of Mexico, it was plagiarized and published by White, Gallaher & White, of New York, who brought it out under a Spanish title. Eventually some twenty-four different editions of this map were published at New York. All but one of them were published by Disturnell, and the map has become widely known as Disturnell's Map. Actually it is White, Gallaher & White's map which Disturnell reprinted with appropriate revision. Accordingly, it seems best to say that there were twenty-four editions of the "Mapa de los Estados Unidos de Méjico", one published by White, Gallaher & White and twenty-three published by Disturnell. The first edition is described below.

First edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican White, Gallaher y White. Nueva York. 1828. Grabado por Balch y Stiles, Nueva York."

White, Gallaher & White's map differed from Tanner's in several respects, including the following: (*a*) the title was translated from English into Spanish, as were all the place names and explanatory legends on the face of the map; (*b*) the scale was enlarged, Tanner's map being on the scale of 1 inch to about 85 miles and White, Gallaher & White's on the scale of 1 inch to about 70 miles; (*c*) extensions of the map along the eastern and northern borders made the new map include Cuba, Florida, Georgia, and parts of South Carolina, northern Iowa, etc., so that whereas Tanner's map was more than 28 inches wide and nearly 23 inches high, White, Gallaher & White's map was nearly 41 inches wide and more than 29 inches high.

That the new map was plagiarized from Tanner's, however, is not merely suggested by the essential identity of the titles. It is proved by the fact that the two maps share the same errors, for example in the outlines of the coast and the courses of the rivers. Moreover, the two maps have the same inserts: a large-scale map of the portion of Mexico between the cities of Veracruz and Mexico, a highly individual table of statistics, and a long table of distances. If there were still any doubt about the matter, it is resolved by an examination of some half-dozen sets of explanatory remarks which are printed on the face of the map. The new map uses all Tanner's remarks and translates them literatim, as is shown by the one quoted below, which is printed on the two maps at the same point between the Colorado River and Santa Barbara, California.

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On Tanner's map.—"These mountains are supposed to extend much farther to the North than here shewn but there are no data by which to trace them with accuracy."

On White, Gallaher & White's map.—"Se supone que estas montañas se estienden mas al Norte de lo que se ezhibe aqui; mas no eziste dato alguno con que poderlas trazar con precision."

Rather curiously, since White, Gallaher & White's map was a plagiarism of Tanner's copyrighted map and since both were published in the United States, the White, Gallaher & White map was copyrighted also. Outside the lower neat line of the new map, near the right border, appear the words "Entered according to Act of Congress, May 31st, 1828, by White, Gallaher & White". This suggests the possibility that Tanner's map was used by friendly agreement in making the slightly enlarged map in the Spanish language; but, if this be so, it seems a little odd that White, Gallaher & White made no public acknowledgment to Tanner in the legend of their map.

The publication in the United States in the year 1828 of this map of Mexico in the Spanish language may possibly be related to the fact that the United States made a treaty of limits with Mexico on January 12, 1828 (Document 60), as well as to a desire to sell copies of the map in Mexico. It is understood, moreover, that during this period a number of books concerning Mexico were printed at New York in the Spanish language.

There are copies of the first edition in the Library of Congress, the Huntington Library, the New York Public Library, and the collection of Dr. W. E. Wrather, of Dallas, Texas.

DISTURNELL'S REPRINTS OF WHITE, GALLAHER & WHITE'S PLAGIARISM OF TANNER'S MAP OF MEXICO

Having observed the salient features of three maps which bear a family resemblance of the order of identity rather than of mere similarity, (*a*) Tanner's 1822 map of North America, (*b*) Tanner's 1825 map of Mexico, and (*c*) White, Gallaher & White's 1828 map of Mexico, we now come to Disturnell's reprint, the earliest identified edition of which was published in 1846, doubtless as a result of the outbreak of the Mexican War. Its title is identical with that of White, Gallaher & White's map except for the date and the name of the publisher. It was printed from the same plates, as is proved by the faint markings of the copyright notice, which was incompletely eradicated and shows on the borders of all but two of Disturnell's editions in 1846, 1847, 1848, 1849, 1850, and 1858. The twenty-three titles are given below, followed by notes concerning a representative selection of the significant differences between the successive editions. There are still other differences. Twenty facsimiles of parts or all of Disturnell's Map are also briefly described. As previously stated, Disturnell's earliest reprint of White, Gallaher & White's map will be numbered as the second edition of the "Mapa de los Estados Unidos de Méjico".

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Second edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1846."

This map may be distinguished from the preceding edition, i.e., the White, Gallaher & White map, by (*a*) the absence of the date 1828; (*b*) the presence of the date 1846; (*c*) the absence of the names "White, Gallaher y White"; (*d*) the presence of the name and address "J. Disturnell, 102 Broadway", and the change of the preceding words "Lo publican" from script to block lettering; (*e*) the absence of the words "Grabado por Balch y Stiles, Nueva York"; (*f*) the absence of the copyright notice outside the lower neat line; (*g*) the moving of the names Oregon, Missouri, and Arkansas to new positions; and (*h*) various additions to the face of the map. These include the names of Iowa, Indian Territory, Balize, etc., the boundaries thereof and of Missouri, Arkansas, and Louisiana, various roads, and a number of notes in English. Many cities are added. Several lakes and streams are modified in position. The coast of California is substantially corrected. Hachures are introduced for certain mountains.

Of decided importance in connection with the subsequent use of later editions as treaty maps are the following: (*a*) the State names "Tamaulipas" and "Cohahuila" are left in the same positions which they occupied on White, Gallaher & White's 1828 map, that is, they are lettered astride the Rio Grande with parts of both names in Texas; (*b*) along the Rio Grande are added in English the words "Boundary as claimed by the United States"; (*c*) along the Rio Nueces and the headwaters of an unnamed stream between it and the Rio Puerco are added an engraved boundary and the English words "Original Boundary of Texas in 1835"; (*d*) between these streams and the Rio Grande are added the words "Prior to the revolution Texas & Cohahuila were united to form one of the Federal States of the Mexican Republic"; (*e*) the part of the engraved boundary of the State of Tamaulipas north of the Rio Nueces in Texas is imperfectly eradicated; (*f*) in the *Tabla Estadistica* the Spanish words "y Tejas" are eradicated from the rubric "Cohahuila y Tejas" but the areas and populations remain unchanged; (*g*) an engraved highway marked "Gen. Taylors Route 1846", and the words "Ft. Brown" have been added near the mouth of the Rio Grande; (*h*) an engraved boundary between Alta California and Baja California extends east and west, near the parallel of 32°15′ north latitude, from a point on the Colorado River about 50 miles south of the Gila to a point on the Pacific coast about 50 miles south of San Diego. This boundary is not present on the White, Gallaher & White map, which has in color but without an engraved line the same northeast-southwest boundary between Upper and Lower California that appears as an engraved line on the 1846 and 1847 editions of the Tanner map, the 1826 edition of which was the source of the twenty-four editions published by White, Gallaher & White or by Disturnell. It is a debatable question whether, if Disturnell had engraved this northeast-southwest boundary upon his

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map in 1846, as Rosa did upon his plagiarism of Tanner's map in 1837, the southern boundary of the United States at the Pacific might have been fixed some 120 miles south of San Diego rather than only a little over a dozen miles south of that city.

There are copies of the second edition in the Library of Congress and in the library of the American Geographical Society of New York.

Third edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1846."

This edition may be distinguished from the second edition by the following modifications: (*a*) in central Texas, between the city of "Sⁿ Antonio de Bejar" and the city of "Austin", a trail some 135 miles in length has been added; (*b*) at the head of the first branch on the east side of the "Rio Sⁿ Marco" north of the city of "Gonzales" a small lake has been introduced. It may be distinguished from the fourth edition by the absence of the name "Rinconado Pass" in Nueva León near Monterrey, Mexico.

There is a copy of the third edition in the collection of Dr. Herbert M. Evans, of Berkeley, California.

Fourth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1846."

This edition may be distinguished from the third edition by the following characteristics: (*a*) the city of Monterrey, Mexico, has been moved southward from 26° north to 25°40′ north, and westward from 23° to 23°35′; (*b*) a group of roads, villages, etc., in the neighborhood have been added; (*c*) Rinconado Pass is shown; (*d*) the city of Saltillo has been moved southward; (*e*) the boundary between the States of Durango and Coahuila has been moved southward from a position north of La Concepcion to a new position close to the large letters *G* and *O* in the word "Durango".

There are copies of the fourth edition in the Library of Congress and in the Crocker Collection, California Historical Society, San Francisco.

Fifth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1846. Revised Edition".

This edition may be distinguished by (*a*) the presence of the words "Revised Edition" in small lettering below and to the right of the date 1846; (*b*) the presence of a scale of English miles below the date; (*c*) the erasure of the words "Carolina del S", the words "Florida del O", and the words "del E" in "Florida del E"; (*d*) the addition of an engraved Florida-Georgia boundary and an engraved Alabama-

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Florida boundary; (*e*) the addition of many roads, railways, and cities in Cuba, Florida, Georgia, and on other parts of the map; (*f*) various additions to and corrections in lakes and rivers in Florida and elsewhere; (*g*) the redrawing of the coast line of Texas; (*h*) the shifting southward of the word "Tejas"; (*i*) the addition of names of many Indian tribes; (*j*) the addition of hachures for and names of peaks and mountain ranges; (*k*) the addition of notes on the face of the map in English. One of these notes, lettered between the Arkansas River and the Ramo de Smoky Hill near longitudes 24° to 26° west of Washington, specifies that "The 'Army of the West' left F^{t} Leavenworth June 30th reached Santa Fe Aug. 18th 1846"; and this note fixes the date of publication of this edition of the map at some period after August 1846.

Of interest in relation to the subsequent use of later editions as treaty maps, are the following: (*a*) the State name "Tamaulipas" has been moved to a new position, so that no part of the name is lettered in Texas between the Rio Nueces and the Rio Grande; (*b*) the State name "Cohahuila" still stands astride the Rio Grande; (*c*) in the *Tabla Estadistica* the area of "Cohahuila" has been reduced by 100,000 *Millas Cuadradas*, to allow for the subtraction of Texas, and the footing of the column has been corrected accordingly, but the population remains unchanged; (*d*) the name "Rio Grande or Bravo del Norte" has been added to the lower course of the river; (*e*) the words "Rio del Norte" have been erased from the mouth of the same stream; (*f*) other modifications nearby include the addition of the words "Battles of Palo Alto & Resaca de la Palma 1846", the words "Salt Lake", and the erasure of the phrase "Gen. Taylors Route 1846".

There is a copy of the fifth edition in the New York Public Library.

Sixth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1846. Revised Edition".

The sixth edition may be distinguished from the fifth by (*a*) the substitution of large lettering for small lettering in the words "Revised Edition"; (*b*) the replacement of the phrase "Scale of Miles" by "Scale of English Miles"; (*c*) the addition of the names "Miami", "L. Macoco", "L. Monroe", and "L. George" in Florida; (*d*) the addition of the words "Route of Gen. Taylor 1846" in southern Texas; (*e*) the change in a road near Corpus Christi; (*f*) the addition of the words "Sandy Desert", "Chaparel", and "Colorado C" nearby; (*g*) the addition of "S. Theresa" in northern Tamaulipas; (*h*) the substitution of "Tabasco" for "Villa Hermosa" in the State of Tabasco; and (*i*) the addition of "Sumasinti R" nearby.

There are copies of the sixth edition in the School of American Research, Santa Fe, New Mexico, and in the Library of Congress.

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Seventh edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The seventh edition of the "Mapa de los Estados Unidos de Méjico" is the earliest of seven or more all published in 1847. It is this map which was sealed, authenticated, and added in February 1848 to the originals of the Treaty of Guadalupe Hidalgo which are now in the archives of the Department of State at Washington. But, as will appear below, this is *a* treaty map but not exclusively *the* treaty map.

The words "Revised Edition" are quoted, as will be remembered, in the Treaty of Guadalupe Hidalgo, but that expression should not be taken to signify that an edition of Disturnell's Map was published in 1847 without these words. Some eighteen editions, beginning with two of those in 1846, including all seven of the editions published in 1847, and continuing through the four editions published in 1848 and five published in 1849, 1850, and 1858 are likewise designated "Revised Edition".

This first of the 1847 editions may be distinguished from the preceding issue by (*a*) the absence of the date 1846; (*b*) the presence of the date 1847; (*c*) the presence of two insert maps in the western part of the Gulf of Mexico showing respectively the Bay of Veracruz and "the battle grounds of the 8th and 9th May 1846" near Palo Alto and Resaca de la Palma; (*d*) the absence of the word "Golfo" from the phrase "Golfo de Méjico" and its replacement by the letter "G."; (*e*) the addition of "Ft Jupiter" in Florida, of a railway east and north of New Orleans in Louisiana, and of several roads, railways, and cities in Cuba; (*f*) the deletion of the word "Chaparel", the change of the words "Salt Lake" to "Salt Lakes", and the headward extension of "Colorado C.", all in southern Texas; (*g*) the addition in Mexico of the figures "P. 8,000" at Veracruz, "P. 10,000" at Matamoros, "P. 15,000" at Monterrey, "P. 16,000" at Saltillo, and many other figures for population; (*h*) the addition, at the bottom of the map, near the middle, of two profiles showing the routes between Mexico City and Veracruz and between Mexico City and Acapulco; (*i*) extensive changes in drainage, roads, and city names in the northern parts of the States of Nuevo León and Coahuila near the Sabinos and Salado Rivers, which are changed from northeasterly to southeasterly courses; (*j*) the extension across the Red River from northern Texas into Indian Territory of the symbol for "Cross Timbers"; (*k*) the addition of hachures and the name "Washita Mts" in southwestern Indian Territory; (*l*) the addition of hachures along the south bank of the "Ensenada Choctau", the east bank of the "Rio Puerco", and the east bank of the unnamed stream east of it which is designated as part of the original boundary of Texas in 1835; (*m*) the introduction of the words "Range of the" before the word "Comanches" in western Texas; (*n*) the addition of the place name "El Toro" near Monterey, California; (*o*) the addition of the place names "Pletel" and "Coco" in southern Tamaulipas; (*p*) the addition of rivers, roads, cities, systems of hachures, and other modi-

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fications in Central America and southern Mexico, including "R. de Segovia", "R. Ulloa", "Yzabal", "Comayagua or Nueva Valladolid", "Guatemala", "Guastatoya", "Telonicapan", "Escuintla", the substitution of "Mosquito Coast" for "Costa Mosquito", the moving eastward of the western boundary of Guatemala and the shifting of the country name, the addition of the names "Honduras", "Tlasila", "Zepilitan", the fort north of Tabasco, "Tonala", "R. Alvarado", "R. S. Juan", "Lalana", "Tutla", "Sierra de la Madre", "Ixtlan", and the highways from La Puebla to Oajaca and from Yzabal to N. Chiapa; (*q*) the addition of roads or conversion from trails to double-line roads, in central and northern Mexico.

Of interest in relation to the use of this seventh edition as a treaty map are the following: (*a*) part of the Rio Nueces is moved southward to a new course nearer the Rio Grande; (*b*) a portion of the old course of this stream is designated as the "Rio Frio"; (*c*) a road southwest of San Antonio de Bexar is deleted; (*d*) a new road is added between San Antonio de Bexar and the Presidio de Rio Grande; (*e*) to this road are transferred the words "Gen! Wool's Route 1846", which were formerly printed along a road farther south; (*f*) on the north side of the Rio Gila, near 33° west longitude, a river crossing is indicated by the addition of the word "Ford"; (*g*) the place names "Agua Sola", "Carizal", and "S. Jose" are added along the trail from San Diego to the junction of the Colorado and Gila Rivers; (*h*) a trail leading from "S. Diego" to "S. Miguel" and southward throughout Baja California is changed to a double-line road; (*i*) the place names "S. Maria", "Buena Vista", "Sario", and "Cocospera" are added south of the Gila River in northwestern Sonora; (*j*) in northeastern Sonora the Gila River is given a new headwater tributary, "R. Suanca", which rises close to the south boundary of New Mexico and upon which a village of Suanca is added.

This seventh edition was published by John Disturnell in the early months of 1847. We know this because Nicholas P. Trist received his instructions as American Commissioner on April 15, 1847, and left Washington the next day, and because on October 25, 1847, James Buchanan, Secretary of State, wrote to Trist, referring to "the division line between Upper and Lower California as delineated on the map which you carried with you" (D.S., 16 Instructions, Mexico, 79–83; serial 509, p. 95). Moreover, Trist quotes, in his memorandum of January 4, 1848, those words of the Secretary of State concerning the map he carried with him from Washington to Mexico, and then goes on to say: "The map referred to by the Secretary of State as the one I brought with me, is the 'Revised Edition' of the one published at New York, in 1847 (forty *seven*) by J. Disturnell. 102 Broadway, and bearing, in spanish, the following title: 'Map of the United States of Mexico, as organized & defined by various acts of the Congress of said Republic, and constructed according to the best authorities.'" In the same memorandum he says that the Secretary of State "had the map before him" when he wrote certain words concerning the boundary between Upper California and Lower California. Trist also said that this boundary "is *erroneously* laid down in your map" and called it the line "laid down in our map".

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This earliest of the 1847 editions was probably used in discussing the boundary of Texas as well as that between the two Californias, for Trist said in his report of the conference between the Mexican Commissioners and himself on September 2, 1847 (printed above), that General Mora y Villamil illustrated certain of his remarks by running his finger "over the territory comprehended between the Nueces & the Bravo, on the map before us".

The seventh edition of the map of Mexico was published not long before April 15, 1847, for Trist observed in his memorandum of January 4, 1848, that the inclusion of San Diego in the territory claimed by the United States had its origin "in *accident*, in pure accident: the accident of the Secretary of State's having before him one map instead of another. That map was the one just published at New York, as an engraver's speculation, to meet the demand which put it into the hands of every body". On January 7, 1848, Trist enlarged upon his mistaken idea that this seventh edition was a new map, a mere speculation, and not based upon the best among earlier maps like that of Baron von Humboldt. Disturnell's Map, he then thought, was "a map, suddenly got up, as the mere speculation of an engraver or bookseller, to meet the demand in our country for Maps of Mexico. And this is the character of the one I brought with me". (The memorandums of Trist referred to are printed above.)

The treaty copy of Disturnell's Map which is now in the Department of State and which is reproduced in facsimile in this volume, has had important uses as follows: (*a*) in Washington by the Secretary of State and possibly by President Polk prior to April 15, 1847; (*b*) in Mexico between May 6, 1847, when Trist reached Veracruz, and February 12, 1848, when Trist sent the map back to Washington; (*c*) in the Department of State and perhaps at the White House on March 6, 1848; (*d*) in the United States Senate between March 7, 1848, when it was received from the White House, and March 10, 1848, when the resolution of advice and consent was adopted; and (*e*) in the Department of State and presumably in the Department of the Interior between March 10, 1848, and December 30, 1853, when the Gadsden Treaty was made.

There are copies of the seventh edition in the Department of State, in the Library of Congress, in the Boston Public Library, in the library of the Wisconsin Historical Society, and in the collection of Mr. George Griggs, of Mesilla, New Mexico.

Eighth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The eighth edition may be distinguished from the seventh by the presence of four insert maps in the Gulf of Mexico rather than only two. It may be distinguished from the five subsequent editions which also bear the date 1847 by the absence of the name "Buena Vista" in the southeast corner of the State of Coahuila, near Saltillo.

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In the neighborhood of the Rio Grande the eighth edition differs from the seventh in the following respects: (*a*) in northern Tamaulipas a trail has been added from La Como to Nuevo Santander; (*b*) the place name "San Fernando" has been moved southward.

There are copies of the eighth edition in the library of the University of Arizona, in the New York State Library, and in the Library of Congress.

Ninth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The ninth edition may be distinguished from the eighth by the presence of the name "Buena Vista" in the southeast corner of Coahuila near Saltillo. In northwestern Sonora it lacks the village of S. Pablo at the junction of the Rio Gila and the Rio Colorado.

In Durango, Coahuila, and Chihuahua this edition shows for the first time the following villages and trails: (*a*) "Aqua Nueva"; (*b*) "Hedionda"; (*c*) "Bueno Ventura"; (*d*) a trail from Aqua Nueva to Bueno Ventura by way of Hedionda; (*e*) "Patos"; (*f*) "La Punta"; (*g*) "Joya"; (*h*) a trail from San Filipe to Encarnacion by way of Castañuela, Patos, and La Punta; (*i*) "Santiago"; (*j*) a trail from La Punta through Santiago and southwestward to the main road from Chihuahua to San Luis Potosí; (*k*) "Lienegas"; (*l*) a trail from Lienegas to Hornos; and (*m*) a trail from Monclova to Lienegas and northwestward to S. Pablo in Chihuahua.

There is a copy of the ninth edition in the collection of Mr. Montagu Hankin, of Summit, New Jersey.

Tenth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The tenth edition may be distinguished from the ninth by the presence of the name "S. Pablo" in the northwest corner of Sonora south of the junction of the Rio Gila with the Rio Colorado and essentially on the site of the present city of Yuma, Arizona. In Coahuila, Tamaulipas, and Nuevo León it lacks the road from Presidio de Rio Grande to Loredo, Tamaulipas.

In the northwestern part of Baja California the name of the first coastal indentation south of "S. Miguel" has been changed from "Bahia S. Francisco or All Saints Bay" to "Bahia Todos Santos or All Saints Bay".

There is a copy of the tenth edition in the Library of Congress.

Eleventh edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The eleventh edition may be distinguished from the tenth by the presence of the road between Presidio de Rio Grande and Loredo,

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and from the twelfth by the absence of the village of Milan Falls in Texas northeast of Austin.

Adjacent to the site of the international boundary, in Coahuila, Nuevo León, and Tamaulipas, there are eight modifications: (*a*) at Loredo, Tamaulipas, a circle has been added for the village site; (*b*) the circle on the bank of the Rio Grande at Revilla has been deleted; (*c*) a new circle for this village has been introduced eight miles farther west; (*d*) the circle for Presidio de Rio Grande has been deleted; (*e*) a new circle for this place has been introduced three miles farther west; (*f*) the northern part of the road from Seratvo, Nuevo León, to Revilla, Tamaulipas, has been altered in position; (*g*) the road from Revilla to Loredo has been moved westward; (*h*) a new road 110 miles in length has been introduced between Loredo and Presidio de Rio Grande.

There is a copy of the eleventh edition in the Library of Congress.

Twelfth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The twelfth edition, a second treaty map, may be distinguished from the eleventh by the presence of the place name "Milan Falls" in central Texas. The absence of a date at Buena Vista in Coahuila distinguishes it from the subsequent edition which is also dated 1847.

In Texas this edition also has the following features which are not on the eleventh edition: (*a*) "Baston"; (*b*) "Marshall"; (*c*) a road from Baston to Henderson by way of Marshall; (*d*) three headwater tributaries of the Rio Sabino altered to flow into the Red River in Louisiana; (*e*) a road from Washington northwestward to Franklin; (*f*) a trail from Franklin northward to "Chihuahua Trail"; (*g*) a road from Nashville to Milan Falls; (*h*) "Liverpool"; (*i*) a road from Virginia via Liverpool to Columbia; (*j*) "Egypt"; (*k*) a road from Port Calhoun southwestward the whole length of St. Joseph Island; (*l*) a road from Port Cavallo to Quintana; (*m*) a road from Quintana to Matagorda; (*n*) a road from Columbus to La Grange; (*o*) a road from Houston to Richmond and continuing southwestward to the Egypt road.

This twelfth edition of Disturnell's Map shares with the seventh edition, as stated above, the distinction of being a treaty map. The seventh edition, as already observed, is filed with the Treaty of Guadalupe Hidalgo in the archives of the Department of State at Washington; and a full-scale, colored facsimile is in a pocket in the back cover of this volume. The twelfth edition is preserved in the archives of the Government of Mexico as number "C–1–2–22–2" and is certified in Spanish and in English. The English certificate, signed by Trist, stands on the right and reads as follows:

This is the Map, referred to in the Fifth Article of the Treaty of Peace, Friendship, Limits and Settlement, between the United States of America and the Mexican Republic, signed this day.

Witness our hands and seals, at Guadalupe Hidalgo, this second day of February, one thousand eight hundred and forty-eight.

125186°—37——25

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A hand-drawn facsimile of a portion of the Mexican treaty map was reproduced in 1878 (*infra*, under discussion of facsimiles). Although imperfect, it is clear that the twelfth edition, the Mexican treaty map, and not the seventh edition, the American treaty map, was reproduced.

There are original colored copies of the twelfth edition in the Mexican archives, in the library of the United States Geological Survey, in the Huntington Library, in the library of the New York Historical Society, and in the Library of Congress; the institution last named also has a photostat of the certified Mexican treaty map. The latter was transmitted with despatch No. 2825, of August 20, 1935 (D.S., File 103.7/2966), from the American Ambassador in Mexico to the Secretary of State.

Thirteenth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The thirteenth edition may be distinguished from the twelfth by the following features in southern Coahuila: (*a*) the place name "Buena Vista" has been erased and relettered farther north; (*b*) the circle for the locality has been replaced by a larger circle with a dot inside; (*c*) at the left of this new symbol crossed sabers have been introduced; (*d*) below appear the word "Battle" and the dates "Feb. 22 & 23, 1847"; (*e*) the place name "Patos" has been moved northward; (*f*) new trails leading westward and northwestward from Patos have been added; (*g*) the place name "S. Antonio" has been introduced on the trail from Castañuela to Alantos.

The chart of the Bay of Veracruz printed as an insert map in the Gulf of Mexico has been modified in the thirteenth edition as follows: (*a*) southwest of the city of Veracruz a curved line of dashes has been introduced; (*b*) along this line appear the words "Vera Cruz invested by the American Army under Gen. Scott, March 1847"; (*c*) south of the city appear the words "City & Castle Surren^{d} March 27. 1847"; (*d*) near the bottom of the map, east of the symbol for an anchor, are added the words "American Fleet"; (*e*) west of this point on the shore is a short line of black dashes; (*f*) opposite this line are added the words "American Forces Landed here March 9th 1847".

Along the site of the international boundary the thirteenth edition shows the following features which are not on the twelfth: (*a*) in Texas, "Goliad" moved northwestward; (*b*) "Refugio" moved northward; (*c*) "Preston" added; (*d*) a road southwest of Victorio deleted; (*e*) the road from Victorio to Refugio in a new position; (*f*) a new stream near Refugio introduced; (*g*) "Laredo", Texas, added opposite "Loredo", Tamaulipas; (*h*) the words "Head of Nav" introduced south of Laredo, Texas; (*i*) the words "Guerreo or" introduced before the place name "Revilla" in Tamaulipas; (*j*) the old name "Guerreo" deleted in Coahuila.

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There are copies of the thirteenth edition in the collections of the American Geographical Society of New York and of Dr. W. E. Wrather, of Dallas, Texas, and in the Library of Congress.

Fourteenth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1848. Revised Edition."

The fourteenth edition may be distinguished from the thirteenth by the substitution of the date 1848 for the date 1847 and by the presence of an insert map entitled "Diagram of the Battle Ground Feb 22^{d} and 23^{d} 1847", which is printed in the Atlantic Ocean east of Georgia. The absence of the words "Boundary pro^{d} by Mr. Trist" at the mouth of the Rio Grande distinguishes it from subsequent editions also dated 1848.

Within the strip of territory adjacent to the international boundary, the fourteenth edition has the following features which are absent from the thirteenth edition: (*a*) in southern Nuevo Méjico and Alta California a road or route from the Rio Grande to the Rio Colorado starts at "Mina de Cobre" and follows the "R. Suanca" and the "R. Gila"; (*b*) the eastern portion of this route is designated "Gen. Kearney's Route Oct. 1846"; (*c*) near the junction of the Gila and the Colorado are introduced the words "Note The Gila on its Nothern side is bounded by a range of lofty Mountains"; (*d*) along the road from the junction of the Gila and the Colorado are introduced the words "Gen. Kearney's Route Dec. 1846"; (*e*) northeast of San Diego is introduced the place name "S. Maria"; (*f*) nearby are added the words "Battle of San Pascal Decr 6th 1846"; (*g*) a trail is added running northwestward from "S. Jose" to "Ciudad de los Angelos"; (*h*) upon this trail is added the place name "Temascal"; (*i*) in northern Sonora, south of the Gila, are introduced the words "Gen. Kearney's Camp Nov 11th 1846"; (*j*) in northern Chihuahua, along the road south of Paso, are introduced the words "Col Doniphan's Route 1847"; (*k*) upon the same road, between Chihuahua and Saltillo, appear the words "Doniphan's Route 1847".

There are copies of the fourteenth edition in the collections of the American Geographical Society of New York and of the New York Public Library.

Fifteenth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1848. Revised Edition."

The fifteenth edition may be distinguished from the fourteenth by the presence of the words "Boundary pro^{d} by Mr. Trist", which are printed in the Gulf of Mexico opposite the mouth of the Rio Grande.

This edition is also remarkable in the following respects: (*a*) in Alta California a dotted line follows the 37th parallel of north latitude eastward from the Pacific Ocean to the meridian of 23° west

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longitude (i.e., west of Washington, D.C.); this line is lettered with the words "Boundary Proposed by Mexico"; (*b*) in Texas a dotted line extends due south from the Red River to the Nueces River near 23°45′ west longitude; this line is also designated "Boundary Proposed by Mexico"; (*c*) where the Arkansas River flows out of the Rocky Mountains, the name "Pikes Peak" is introduced; (*d*) at "Cuidad de los Angelos" are added the words "Battle Jan 9th 1847"; (*e*) west of the junction of the Colorado River with the Gila, the words "Sandy Desert" appear for the first time; (*f*) from the mouth of the Gila River a dotted boundary runs southward throughout the whole length of the Gulf of California; (*g*) west of the Rio Grande the southern boundary of Nuevo Méjico is deleted; (*h*) north of the parallel of 32° north latitude and about 90 miles west of the Rio Grande, the place name "Corepelado" has been removed; (*i*) a new south boundary of Nuevo Méjico is drawn on the parallel of 32° north latitude except at the east end, where it bends a little farther south; this line is designated "Boundary proposed by Mr. Trist"; (*j*) the Rio Grande is shifted westward some 25 to 35 miles in the 200 miles of its course from "Fra Cristobal", north of "Paso", to "Fte S. Eleazario", south of that place; (*k*) a hachured mountain range nearly 70 miles in length has been introduced between the old course of the Rio Grande and the new course; (*l*) the road along this portion of the Rio Grande and for some miles farther south has been altered in position; (*m*) "Brazito" has been moved southward to a point on the east bank of the Rio Grande near the site of "Paso"; (*n*) "Sn Diego" has been moved southeast and relettered "San Diego"; (*o*) "Robledillo" has been deleted; (*p*) "Dona Ana" has been introduced north of "La Salinera"; (*q*) "La Canada" has been deleted; (*r*) "Fte de Carizal" has been relettered "Carrizal"; (*s*) a lake and stream have been introduced nearby; (*t*) hachures have been introduced for the northward extension of "Mte Barrigon"; (*u*) "L. S. Martin" has been deleted and a larger body of water, called "Laguna de Encinillas", has been introduced a little farther south; (*v*) the dotted boundary extending westward from "Mte Guadalupe" to the Rio Grande has been deleted; (*w*) a new dotted boundary extends southwestward from "Mte Guadalupe" to the Rio Grande, with the words "Boundary Proposed by Mr. Trist" engraved and then imperfectly erased again; (*x*) the name "Paso" is deleted; (*y*) the name "Fte Paso del Norte" and the population "P. 5,000" are deleted from their position near 32°10′ north latitude; (*z*) the name and the symbol for "Paso del Norte" are introduced on the west bank of the relocated Rio Grande near 31°50′ north latitude, with the population "Pop. 5,000" nearby.

There is a copy of the fifteenth edition in the Library of Congress. Above the title it is annotated in ink with the words "This Map forms part of the Mexican Boundary Commission". As it was in the General Land Office, Department of the Interior, prior to June 1935, and as it is worn and mutilated and bears still other annotations, it may be assumed that this particular map was used in the

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field by John R. Bartlett, the Boundary Commissioner who worked under the direction of the Secretary of the Interior in and soon after the year 1850, or else by John B. Weller, his predecessor, in 1849.

Sixteenth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1848. Revised Edition."

The sixteenth edition may be distinguished from the fifteenth by the presence of the words "Boundary Proposed by Mexican Commissioners", in place of the words "Boundary Proposed by Mexico", just below the word "California" in the term "Alta California". It may be distinguished from the seventeenth edition by the complete absence therefrom both of the two designations and of the long east-west boundary itself.

Other outstanding characteristics of the sixteenth edition are indicated below: (*a*) the east-west boundary between the Pacific Ocean and the Gulf of California, which is represented by heavy dashed lines on several previous editions, has been deleted; it is replaced by a line of fine dots in exactly the same position, i.e., north of the parallel of 32° north latitude and south of the place name "S. Miguel"; (*b*) on the southern boundary of New Mexico the words "U.S. Commissioner" have been added between the phrase "Boundary proposed by Mr. Trist" and the place name "M^{te} Florida"; (*c*) in western Texas the phrase "Original Boundary of Texas in 1835" has been altered to read "Boundary of Texas in 1835 (See S. F. Austin's Map)"; (*d*) the northwestern headwater of the San Antonio River has been designated "Medina R"; (*e*) a dashed boundary has been introduced between the head of this stream and the head of the Nueces River, continuing thence northwestward, eastward, and northward to the Red River northeast of "Waco Village"; (*f*) along this boundary are added the words "Spanish Boundary 1786 between Coahuila & Texas"; (*g*) from the head of the Nueces River a dashed boundary extends southwestward to the Chihuahua-Coahuila boundary on the south bank of the Rio Grande; (*h*) to the phrase "Prior to the revolution Texas & Cohahuila were united to form one of the Federal States of the Mexican Republic" have been added the words "(Mexican Decree May 7. 1824)"; (*i*) along the meridian of 23°45′ west longitude, between the Red River and the Nueces, the phrase "Boundary Proposed by Mexico" has been amended to read "Boundary Proposed by Mexican Commissioners"; (*j*) the name "R. Colorado", near the head of the Red River, has been amended to read "R. Colorado or Red R"; (*k*) the headwaters of the "Rio Colorado de Bajar" have been cut off on the northwest and added to on the southwest by the inclusion of a stream formerly shown as a tributary of one of the branches of the Rio Grande; (*l*) "Loredo", Tamaulipas, is deleted; (*m*) at the mouth of the Rio Grande the phrase "Boundary pro^{d} by Mr. Trist" has been amended by the addition of the words "U.S. Commissioner".

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There are copies of the sixteenth edition in the Library of Congress, in the New York Public Library, and in the library of the New York Historical Society.

Seventeenth edition.—"Mapa de los Estados Unidos de Méjico, California &c. Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1848. Revised Edition."

The seventeenth edition may be distinguished from the sixteenth by the presence of the words "California &c." in the title.

Among the characteristics of this edition are the following: (*a*) the whole east-west boundary along the 37th parallel from the Pacific Ocean to the meridian of 23° west longitude has been deleted; (*b*) the words "Boundary Proposed by Mexican Commissioners" have been deleted from this boundary; (*c*) the east-west boundary from the Pacific Ocean to the Gulf of California between the place name "S. Miguel" and the 32d parallel has been deleted; (*d*) a new boundary has been introduced running eastward from San Diego Bay to the junction of the Colorado River with the Gila; (*e*) along this line are introduced the words "New U.S. Boundary"; (*f*) the country name "Méjico" and the words "Gold Region" are introduced for the first time.

There are copies of the seventeenth edition in the Library of Congress and in the library of the New York Historical Society.

Eighteenth edition.—"Map of California, New Mexico and Adjacent Countries Showing the Gold Regions &c. New York. Published by J. Disturnell. 1849. Printed at Ackerman's rooms, 120, Fulton St N.Y."

The eighteenth edition covers only the western half of the "Mapa de los Estados Unidos de Méjico". It was made from a new plate and seems to have been printed from stone rather than from copper. It was mechanically reproduced from the copperplate of the seventeenth edition or else from a paper negative derived from that plate, since all the corrections and incomplete erasures on the seventeenth edition also appear on the eighteenth.

A number of the major geographical names have been translated from Spanish into English, notably "New Leon" for "Nuevo Leon", "New Mexico or Santa Fe" for "Nuevo Méjico ó Santa Fe", "Gulf of California" for "Golfo de California", "Lower California" for "Baja California", "Pacific Ocean" for "Mar Pacífico", "Mexico" for "Méjico", etc. The letters "Est" in the country name "Estados Unidos" have been deleted, and the name "United States" has been lettered boldly across the upper part of the map. The name "Texas" is introduced, and there are additional streams, lakes, mountains, trails, place names, and remarks in Upper California.

In the frontier area seven features are notable: (*a*) the State name "Cohahuila" is still lettered in its original position with the letter *L* astride the Rio Grande and the final letter *A* north of that

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stream near the Nueces River; (*b*) the north-south dotted boundary in Texas, extending from the Nueces to the "R. Colorado or Red R" on the seventeenth edition, has been deleted on the eighteenth; (*c*) the words "Boundary Proposed by Mexican Commissioners" have been deleted from this boundary; (*d*) the trail from San Diego to the mouth of the Gila River and thence southeastward through Sonora has been changed to a double-line road; (*e*) from "Mina de Cobre" on the Rio Grande to the junction of the Gila with the "R. de las Asencion" a long trail has been introduced by way of "Terrenate" and "F^{te} Santa Cruz" in the part of northern Sonora acquired by the United States in the Gadsden purchase; (*f*) this trail is designated "Lieut. Col. Cooke's Wagon Route"; (*g*) in New Mexico the word "Apacheria" is deleted.

There are copies of the eighteenth edition in the Library of Congress, in the Bancroft Library, Berkeley, and in the Huntington Library, San Marino, California.

This map was issued as an accompaniment to the second of the three editions of Disturnell's Emigrant's Guide to New Mexico, California, and Oregon. The first edition is a 46-page pamphlet, published in 1849 and accompanied by a folded map by J. Calvin Smith entitled "Map of North America", having a large-scale insert map entitled "Map of the Gold Region California". The map was published by Disturnell but is not a version of the "Mapa de los Estados Unidos de Méjico". The second edition of this emigrant's guide, likewise dated 1849, is an 80-page pamphlet accompanied by the English-language version of the western half of Disturnell's "Mapa de los Estados Unidos de Méjico" described above as the eighteenth edition. The third edition of the emigrant's guide is dated 1850. The only two identified copies of that edition are accompanied by J. Calvin Smith's "Map of North America", and it is uncertain whether the map usually issued with it was Smith's or the revised English-language version of the western half of Disturnell's "Mapa de los Estados Unidos de Méjico" described below as the nineteenth edition.

Nineteenth edition.—"Map of California, New Mexico and Adjacent Countries Showing the Gold Regions &c. New York. Published by J. Disturnell. 1849. Printed at Ackerman's rooms, 120, Fulton St N.Y."

The nineteenth edition may be distinguished from the eighteenth by the following additions: (*a*) a dotted trail extending from western Texas to "F^{te} Santa Cruz" in northern Sonora; (*b*) the words "Col. Hays' Route" at two points on this trail; (*c*) the place name "Fredricksburg" in central Texas; (*d*) the place name "San Pedro" in northern Sonora; (*e*) a dotted trail from the eastern edge of the map near latitude 36° to the "Route of the Santa Fee Expedition 1841" on the "Ensenada de Trace"; (*f*) the words "Gregg's Route" on this trail; (*g*) a trail symbol, a creek symbol, and the words "Goose Creek" at the north edge of the map between longitudes 36° and 37°

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west of Washington; (*h*) the words "Lawson Pass" and a dotted east-west line near the north edge of the map in the valley west of "Fremont's Route"; (*i*) the words "to Oregon" on a trail near the north edge of the map and longitude 42° west of Washington.

There is a photostat of the nineteenth edition in the Library of Congress.

Twentieth edition.—"Mapa de los Estados Unidos de Méjico, California &c. Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1849. Revised Edition."

None of the anglicizing of Spanish names on the eighteenth edition has been carried on to the twentieth, which is printed from the original copperplate. The other additions on the eighteenth edition, notably in Upper California, are now made on the twentieth, which differs from all previous Spanish-language editions in its date. None of the changes on the nineteenth edition, however, appear on the twentieth.

There is a copy of the twentieth edition in the collection of Mr. Edwin Grabhorn, of San Francisco, California.

Twenty-first edition.—"Mapa de los Estados Unidos de Méjico, California &c. Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1849. Revised Edition."

The twenty-first edition differs from the twentieth in the following respects. In California are added the place names "Webster", "Benicia", "Martinez", "Suisan", "Stockton", "N. York", "Fremont", "Vernon", "St Louis", the words "Gold Region", "Mt Linn", "Laguna", and "Coast Range", and a trail symbol running northeast from "S. Jose", California. In Texas are added "San Marcos", a road from San Marcos to Seguin, "New Braunfels", a road from San Marcos to Austin, "Fredericksburg", a road from Fredericksburg to Austin, a road from Corpus Christi to Laredo, Texas, and a road from Corpus Christi to Mier, Tamaulipas, with a branch leading to Comargo; "Seguin" is moved northwestward to a new position; the road from San Antonio de Bexar to Bastrop is moved so as to pass through San Marcos; the trail from San Antonio de Bexar to Austin and the road from San Patricio to Mier are deleted. In Oregon are added a new course of the "Rio Luis or Snake R" from "Fᵗ Hall" westward to 37°30′; a road on the south bank of this stream; two new tributaries of the Snake River, one called "Goose Cr." Near 38° north latitude and 28° longitude west of Washington are added a short trail and the words "Fremonts Route Dec 1848".

There is a copy of the twenty-first edition in the Library of Congress.

Twenty-second edition.—"Mapa de los Estados Unidos de Méjico, California &c. Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1850. Revised Edition."

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The twenty-second edition may be distinguished from the twenty-first by two additions: (*a*) along the Missouri-Arkansas boundary are engraved the words "Missouri Compromise Line 36°30′"; (*b*) between the top of the map at longitude 43° west of Washington and the junction of the Rio Virgin with the Rio Colorado are added two dotted lines similar in form to the Nevada-California boundary but in different positions. Actually the territories east of these lines in 1850 were Utah and New Mexico.

There are copies of the twenty-second edition in the Crocker Collection, California Historical Society, San Francisco, and in the Bancroft Library, Berkeley, California.

Twenty-third edition.—"Mapa de los Estados Unidos de Méjico, California &c. Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 157 Broadway. Nueva York. 1850. Revised Edition."

The twenty-third edition may be identified by the following modifications: (*a*) Disturnell's street address is changed in the title; (*b*) the words "Eagle Pass" are added in northern Coahuila; (*c*) the words "Trinity or" are introduced before the words "Smiths R" in northern California; (*d*) the words "Sacramento City" are substituted for the words "Nueva Helvetia"; (*e*) the words "S. Jose" are relettered in capitals; (*f*) to the right of the title are introduced the words "*Note.* In the 1847 edition of this map which was appended to the Treaty of Guadalube Hidolgo, dated Feb. 2, 1848, a geographical error was discovered and corrected in regard lo the true position of Paso del Norte situated near the 32ª degree of North Latitude"; (*g*) below the boundary which extends eastward from San Diego to the junction of the Colorado River with the Gila are introduced the words "North West Boundary of Mexico As defined by the Commissioners in October 1849. North Latitude 32°31′59″ Longitude 7 H. 48 M. 21 S. W. from Greenwich being about 17 miles to the Southward of the town of San Diego in Upper California"; (*h*) the place name "S. Miguel" is moved westward.

There are copies of the twenty-third edition in the Huntington Library, San Marino, California, and in the Library of Congress.

Twenty-fourth edition.—"Mapa de los Estados Unidos de Méjico, California &c. Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell. Nueva York. 1858. Revised Edition."

The twenty-fourth edition, latest identified issue of Disturnell's Map, is readily recognized by its date. Among respects in which it differs from the twenty-third edition are the following: (*a*) Disturnell's street address is deleted from the title; (*b*) between the Rio Grande and the Gulf of California the present southern boundary of the United States is indicated by a dash-dot line; (*c*) this boundary is marked "Gadsden's Treaty Line"; (*d*) the territory between this dash-dot

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line and the Gila River is designated "Ter. of Arizona"; (*e*) the initial letter of the country name "Méjico" is left in Arizona; (*f*) a number of railway routes are added throughout the map.

There are copies of the twenty-fourth edition in the library of Princeton University and in the Library of Congress.

THREE SIGNIFICANT EDITIONS OF DISTURNELL'S MAP

During the negotiation of the Treaty of Guadalupe Hidalgo, at least three different editions of Disturnell's Map were used. One of these was the seventh edition, dated 1847 and now with the American originals of the treaty in the archives of the Department of State at Washington. A second was the twelfth edition, also dated 1847 and now with the original treaty in the archives of Mexico. There is no evidence that either Trist or the Mexican Plenipotentiaries knew that they authenticated and placed with the treaty originals two different editions of Disturnell's Map or, indeed, that they suspected there were at least seven editions all dated 1847 and all designated "Revised Edition". As a matter of fact, although the differences between the seventh edition and the twelfth are numerous, none of these differences caused complications, so far as we know, in the boundary marking by Weller, Bartlett, and their Mexican colleagues.

The third significant edition of Disturnell's Map is one of those published in 1846. Robert E. Lee used and commented upon it in January 1848 when he was assisting Trist in determining whether San Diego was in Upper California or in Lower California. We do not know which of the several 1846 editions he was using.

THE FACSIMILES OF DISTURNELL'S MAP

Since 1848 twenty or more facsimiles of Disturnell's Map have been produced. Most of them have to do with the marking of the international boundary which limits the acquisition by the United States of the territory now comprising California, Nevada, Utah, Arizona, New Mexico, and parts of Wyoming, Colorado, and Texas. The use of the names of the engravers, Duval, Hoen, and Ackerman, with the facsimiles numbered 3 to 11 below is merely one of convenience and should not be interpreted as indicating that these engravers either prepared or published the facsimiles of parts of Disturnell's Map which appeared in certain congressional documents.

1. E. D. Mansfield's 1848 Facsimile Entitled "Battle Grounds, Taken by permission, from Disturnell's Map of Mexico".

This is an incomplete black-and-white facsimile of the portion of Disturnell's Map from Corpus Christi, Texas, to Veracruz, Mexico, and inland to Saltillo, San Luis Potosí, and Mexico City, and is reproduced in E. D. Mansfield's Mexican War (New York, 1848), page 8. It shows the sites of several military engagements which are not represented on Disturnell's Map. The presence of the words "National Bridge" northwest of Veracruz shows that one of the four 1848 editions was reproduced.

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2. The United States Government's 1849 Facsimile Entitled "Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

This is a full-scale, black-and-white, gold-toned contact print of the whole map, probably made in 1849 by the Department of State rather than in 1850 by the Department of the Interior. The edition reproduced was the seventh, and the particular map was the one with the originals of the Treaty of Guadalupe Hidalgo which are in the archives of the Department of State at Washington.

The second letter of instructions from James Buchanan, Secretary of State, to John B. Weller, the first Boundary Commissioner, dated February 13, 1849, included a reference to "the Map of the United Mexican States; published at New York, in 1847, by J. Disturnell, of which a copy was added to the Treaty bearing the signatures and seals of the Plenipotentiaries". Buchanan then said: "You are now furnished with a certified copy of this Map" (D.S., 37 Domestic Letters, 165–69; see Senate Executive Document No. 34, pt. 1, 31st Congress, 1st session, serial 558, pp. 4–5). Likewise, the instructions from D. C. Goddard, Secretary of the Interior *ad interim*, to John R. Bartlett, the third Boundary Commissioner, on August 1, 1850, contained slightly paraphrased statements of the same tenor, concluding with the words "You are furnished with a certified copy of this map" (Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 87–88). It is probable, though not certain, that John C. Frémont, the second appointee as Boundary Commissioner, was also furnished with a certified copy of the map on June 26, 1849, when John M. Clayton, Secretary of State, sent him a commission and instructions, since Clayton transmitted "a copy of the several instructions which this Department has addressed to your predecessor" (D.S., 37 Domestic Letters, 239–40). The form of certification is not known, for neither the identical facsimile furnished to Weller nor the one supplied to Bartlett appears to have been preserved.

A half-dozen copies of this facsimile were in the Department of State in 1936, and two copies were in the Library of Congress, but none of these bears a certificate. The identity of the facsimile with the treaty map in the Department of State is established not only by the reproduction on the facsimile of distinctive tears and other defects on the face of the treaty map and by the brush marks on the hand-colored boundaries, but also by a gap in the upper neat line of the facsimile at the precise position where the certificate is attached to the treaty map itself.

3. Duval's 1852 Facsimile Entitled "That Part of Disturnell's Treaty Map in the Vicinity of the Rio Grande and Southern Boundary of New Mexico, as refrered to by U.S. Surveyor in Communication to Commissioner, July 25. 1851. See page 281, Senate Ex. Doc. 119, 32d Congress, 1st Session [serial 626]. P. S. Duval & Co's Steam lith. Press Phila".

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The date of authorization for the printing of this document was August 31, 1852. Two thousand copies of the facsimile were printed, and it is inserted at the end of the document, as are also facsimiles 4, 5, and 6. It differs from Disturnell's Map in the absence of several towns and roads and in the presence of a heavy east-west line marked "True position of parallel of 32° N. Lat." and of similar lines for the parallels of 34° and 36°. These added parallels on the facsimile are about 35 English miles north of the parallels of 32°, 34°, and 36° on Disturnell's Map.

A separate copy of this facsimile in the Bartlett correspondence in the Department of State bears the name of A. B. Gray, a number of computations in pencil, a line marked "Bartlett & Condé's line parallel of 32°22′", a cross marked "Gray's line Treaty", and the assertion that there were "about 6000 Square Miles between true & false line". Another copy of this facsimile in the same file is similarly annotated in ink.

4. Duval's 1852 Facsimile Entitled "Mexican Boundary B. Extract from the Treaty Map of Disturnell of 1847. Referred to in Col: Graham's Report to the Hon: the Secretary of the Interior of Augst 16th 1851. To face page 245, Senate Ex: Doc: 119, 32^{d} Congress, 1st Session [serial 626]. P. S. Duval & Co's Lith^{y} Phila^{a}".

This facsimile comprises all the territory from the Rio Grande to the California coast south of San Diego. It differs from the treaty maps in including a rectangular area, obliquely ruled, between the Rio Grande and the headwaters of the Rio Gila, marked A, B, C, D. Along the upper border thereof are engraved the words "Messrs Bartlett & Condé's Line", along the lower border the words "Treaty Line", and inside the area the words "5950 Square miles". Many of the names and roads on Disturnell's Map are omitted from the facsimile. Along Bartlett and Condé's line, a little over 70 miles west of the Rio Grande, appear the words "Arrested here on the part of the United States, July 1851".

5. Duval's 1852 Facsimile Entitled "N° 2. Disturnel's Map, exhibiting the error in the Rio Grande's Position. Accompanying Commissioner Bartlett's letter to the Secretary of the Interior of Decr 28th 1850. (See pages 392 & 393; Senate Ex. Doc. 119.—32^{d} Congress, 1st Session [serial 626].) P. S. Duval & Co's Steam Lith. Press Phil^{a}".

This facsimile differs from the corresponding portion of Disturnell's Map in the omission of place names, roads, etc., as well as in the following particulars. A dashed stream about 2° west of the Rio Grande of Disturnell's Map is marked "True position of the Rio Grande". A city symbol about 2° due west from El Paso is marked "True position of El Paso".

6. Duval's 1852 Facsimile Entitled "N° 1. Accompanying Commissioner Bartlett's letter to the Secretary of the Interior, dated 'Santa Rita del Cobre, August 8th 1851'. See page 148, Senate Ex. Doc. 119.—32^{d} Congress, 1st Session [serial 626]".

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This is an incomplete copy of the part of Disturnell's Map from "Paso" to "F^{te} de Tucson" and from "Mina de Cobre" to "Cacurape".

7. Duval's Second 1852 Facsimile Entitled "Mexican Boundary B. Extract from the Treaty Map of Disturnell of 1847. Referred to in Col: Graham's Report to the Hon: the Secretary of the Interior of Augst 16th 1851. To face page 179, Senate Ex: Doc: 121, 32^{d} Congress, 1st Session [serial 627]. P. S. Duval & Co's Lith^{y} Philad^{a}".

This facsimile appears to be from the same plate as No. 4 above, the title being modified only with reference to the Senate document in which it is printed and in which it follows page 250. A second ranch symbol has been added west of the Rio Grande at "La Rancheria".

8. Duval's 1853 Facsimile entitled "Mexican Boundary B. Extract from the Treaty Map of Disturnell of 1847. Referred to in Col: Graham's Report to the Hon: the Secretary of the Interior of Augst 16th 1851. To face page 179, Senate Ex: Doc: 121, 32^{d} Congress, 1st Session. P. S. Duval & Co's Lith^{y} Philad^{a}".

To this facsimile, published in an 1853 edition of the Senate document referred to above, are added hachures and names for "M^{te} Babuquiburi", "M^{te} Sta Clara", "M^{te} Burros", "Sierra de los Mimbres", and hachures for several escarpments. The names "Robledillo" and "La Rancheria" are relettered.

9. Hoen's 1853 Facsimile Entitled "N° 5. That Part of Disturnell's Treaty Map in the Vicinity of the Rio Grande and Southern Boundary of New Mexico refered to by U.S. Surveyor in (his Communication to the Commissioner) July 25. 1851. Showing his plan of removing the parallels. Senate Ex. Doc. [No. 41] 32^{d} Congress 2^{d} Session [serial 665]. Lith. by A. Hoen & Co. Balto."

This facsimile covers the same ground as No. 3 above, the first of the Duval facsimiles, but is an entirely new engraving. One of the names is the other side up, some are in a different style of lettering, and some are in slightly different positions.

10. Hoen's 1853 Facsimile Entitled "N° 1. Disturnel's Map, exhibiting the error in the Rio Grandes Position. Accompanying Commissioner Bartlett's letter to the Secretary of the Interior of Feb. 7th 1853. Senate Ex. Doc. [No. 41] 32^{d} Congress 2^{d} Session. Lith. by A. Hoen & Co. Balto."

This facsimile covers the same ground as No. 5 above, but is an entirely new engraving. It differs from Duval's engraving not only in having the words "Rio Grande" and the words "True position of the Rio Grande" lettered the other side up but also in two other respects. The Rio San Pedro is shown farther west and incompletely on Hoen's facsimile, and it is Duval's facsimile which is faithful to Disturnell's original. The town symbol designated "True position of El Paso" is not due west of the Paso of Disturnell's Map, as Duval shows it, but southwesterly of El Paso.

11. Ackerman's 1855 Facsimile Entitled "That Part of Disturnell's Treaty Map in the Vicinity of the Rio Grande and Southern Boundary of New-Mexico as referred to by U.S. Surveyor, in Communication to Commissioner, July 25.

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1851. With Messrs Bartlett & Condés Line traced off and the true Situation of the Parallels with reference to Natural objects in the Vicinity shewn. Ackerman Lith 379 Broadway N.Y."

This facsimile covers the same ground as No. 3 and No. 9 above, but is an entirely new engraving. It is published in Senate Executive Document No. 55, 33d Congress, 2d session, serial 752. The Senate authorized printing on February 19, 1855, and two thousand copies of the map were printed, one hundred of them for the use of A. B. Gray.

12. Tracing bearing the words "Copied from 'J. Disturnell's Map' of the United States and Mexico. *1847*. Office Coast Survey, Washington, March 30th 1853".

This map covers the territory from San Antonio, Texas, to the Pacific coast at San Miguel. There is no record of the purpose of the tracing. The presence near San Miguel of the place name "Bahia Todos Santos or All Saints Bay" shows that, although an 1847 edition was traced, it was not the American treaty map but an edition subsequent to the ninth. This tracing is now in the Library of Congress.

13. Tracing bearing the words "Nº 4. Sketch of Texas, with the Boundaries of Mexican States, as shown on the Map of the United States of Mexico, by J. Disturnell. 1848. E. Gilman, Drsr".

In outline this map, now in the Library of Congress, shows Texas and New Mexico as well as the northeastern States of Mexico. It was traced, for an unrecorded purpose, either from an 1847 edition or from the fourteenth edition of Disturnell's Map, the earliest of the four printed in 1848, but has the New Mexico-Chihuahua boundary as it is on the fifteenth edition. An estimated area of Texas, in square miles and in acres, is lettered in the upper right corner.

14. Tracing in the General Land Office Entitled "Extract of Mapa de los Estados Unidos de Méjico, Lo Publican J. Disturnell 102 Broadway Nueva York. 1848".

This map covers the territory from Louisiana to the western boundary of Nueva Méjico and from the top of Disturnell's Map to the southern boundary of Tamaulipas. The tracing was made long ago for an unrecorded purpose. The presence of the phrase "Boundary Proposed by Mexico" at two points on the tracing shows that it was made from the fifteenth edition.

15. The Mexican Government's 1878 Facsimile Entitled "Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway Nueva York. 1847 Revised Edition."

This is an incomplete facsimile of the part of Disturnell's Map between the mouth of the Rio Grande and the coast of California.

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It is published in Tratados y convenciones concluidos y ratificados por la Republica Mexicana desde su independencia hasta el año actual, acompañados de varios documentos que les son referentes. Edicion oficial (Mexico City, 1878), opposite page 214. For convenience, the title has been moved from the northeast corner of the map to the southwest corner. The map is not reproduced by photographic process but by redrawing, in the course of which many names have been misspelled. It was not made from the seventh edition but from the twelfth.

16. The United States Geological Survey's 1923 Facsimile Entitled "Part of the Map of Mexico Prepared by J. Disturnell and Published in New York in 1847".

This facsimile was published in 1923 as plate IV of Douglas, Boundaries, Areas, Geographic Centers and Altitudes of the United States, 1st ed. (U.S. Geological Survey Bulletin 689). It was not reproduced from the treaty map which is in the Department of State, i.e., the seventh edition, but from a copy of the twelfth edition in the library of the Geological Survey. Thus the Geological Survey has reproduced a treaty map, but it is the Mexican treaty map and not the American treaty map.

Below the title of the facsimile the following statements are printed:

This is a photographic reproduction of the part of the map referred to in the treaty of Guadalupe-Hidalgo of 1848 and although very inaccurate is of considerable historical value. The map is drawn on the scale of 70 miles to 1 inch. Longitudes are indicated in degrees west of Washington.

The following are features of especial interest:

The area shown as New Mexico (Nuevo Méjico), having indefinite western and southern boundaries.

The town called Paso, shown as about 8 miles below the southern boundary of New Mexico and about 31′ of latitude north of its actual position.

The Texas boundary line of 1835.

The area called Alta (Upper) California, north of Gila River, which was sold to the United States in 1848.

The facsimile is unfaithful to the original in replacing the words "United States" by the abbreviation "U.S." on the Rio Grande in the phrase "Boundary as claimed by the United States". The area is limited to a little less than the northwest quarter of the map, so that the lower course of the Rio Grande and the territory between that stream and the Rio Nueces are not shown, although this territory was involved in important ways in the negotiation of the Treaty of Guadalupe Hidalgo.

17. The United States Geological Survey's 1930 Facsimile Entitled "Part of the Map of Mexico Prepared by J. Disturnell and Published in New York in 1847".

This facsimile was printed from the same plate as the one described above. It was published in 1930 as plate 6 of Douglas, Boundaries, Areas, Geographic Centers and Altitudes of the United States,

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2d ed. (U.S. Geological Survey Bulletin 817) and differs from the 1923 edition in only one respect. The words "Bulletin 689 Plate IV" on the upper right border are replaced by the words "Bulletin 817 Plate 6".

18. The United States Geological Survey's 1932 Facsimile Entitled "Part of the Map of Mexico Prepared by J. Disturnell and Published in New York in 1847".

This facsimile was likewise printed from the same plate. It was published in 1932 as plate 6 of the reprint of U.S. Geological Survey Bulletin 817. There is no easy way to distinguish the 1932 edition from that of 1930 except by finding them in the publications in which they appeared.

19. Paullin and Wright's 1932 Facsimile Entitled "United States-Mexican Boundary (Drainage and projection from Disturnell's 'Mapa de Méjico, 1847')".

This is plate 94A in Charles O. Paullin and John K. Wright's Atlas of the Historical Geography of the United States, published jointly in 1932 by the Carnegie Institution of Washington and the American Geographical Society of New York. It consists of the western two thirds of Disturnell's Map, skeletonized to a net of parallels, meridians, and streams and reduced in scale. Upon this base eleven boundary proposals between 1845 and 1848 have been compiled in red, blue, and green.

Despite the assertion in the title of this facsimile, there never was an edition of Disturnell's Map entitled "Mapa de Méjico", published in 1847 or any other year. The base used was a random 1847 edition of Disturnell's Map rather than either the seventh edition or the twelfth edition, which were the treaty maps. On this 1932 facsimile the representation of the boundary proposed by the Mexican Commissioners on September 6, 1847, differs decidedly in position from the representation of this boundary proposal on the fifteenth edition, published in 1848.

20. The United States Government's 1935 Facsimile Entitled "Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

This full-scale, colored facsimile is in a pocket inside the back cover of this volume. After the printing of the statement on the upper right border of this facsimile that the map reproduced is "the earliest of five or more 1847 editions" of Disturnell's Map, two additional 1847 editions were identified. The American treaty map is the earliest of the seven.

USES OF DISTURNELL'S MAP IN 1852

In the act of Congress approved August 31, 1852, making appropriations for the civil and diplomatic service of the United States for the year ending June 30, 1853, there was a proviso making it necessary

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for the President of the United States to use Disturnell's Map in an important way. The clause reads as follows (10 Statutes at Large, 94–95):

> For running and marking the boundary line between the United States and Mexico, under the treaty of Guadalupe Hidalgo, one hundred and twenty thousand dollars: *Provided*, That no part of this appropriation shall be used or expended until it shall be made satisfactorily to appear to the President of the United States that the southern boundary of New Mexico is not established by the commissioner and surveyor of the United States farther north of the town called "Paso" than the same is laid down in Disturnell's map, which is added to the treaty.

The proviso was introduced as an amendment in the Senate on August 27, 1852, by Senator James M. Mason, of Virginia, Chairman of the Committee on Foreign Relations. The record of the debate does not show that a copy of Disturnell's Map was laid before the Senate by either Senator Mason or his colleagues (Congressional Globe, XXI, 2402–7, August 27, 1852; Daily National Intelligencer, August 30, 1852). The other Senators who discussed the amendment were Clarke, of Rhode Island; Pearce, of Maryland; Weller, of California; and Underwood, of Kentucky. Senator Weller had himself been a United States Boundary Commissioner in 1849.

On October 11, 1852, the Secretary of the Interior, Alexander H. H. Stuart, responsive to an inquiry from President Fillmore dated September 10, 1852, wrote to the President concerning this proviso and the President's duty in the premises. The Secretary included in his letter the following statement (Senate Executive Document No. 6, 33d Congress, special session of the Senate, serial 688, p. 21):

> To enable you to fulfil this duty, I respectfully submit the following report of the facts of the case, accompanied by a copy of Disturnell's map, and other documents bearing on the question.

The particular copy of Disturnell's Map then transmitted to the President of the United States has not been identified.

The Secretary of the Interior pointed out to President Fillmore (*ibid.*, 24, 25) that—

> the line, as established by the joint commission, is but about seven geographical miles north of the position of Paso, as marked on the map. But when Paso is transferred from 32°15½′, its place on the map, to its true position, which is 31°45′ north latitude, or more than 30′ south of its supposed position, then the distance between the line and El Paso is increased to more than thirty-seven geographical miles.
>
> . . . . . .
>
> I do not see how, by a fair construction of the law, any part of the money can be drawn from the treasury, and I am therefore compelled, respectfully, to submit to you the propriety of at once suspending the operations of the commission, as there are no means at your disposal to maintain it in the field.

President Fillmore replied on October 14, 1852, saying (*ibid.*, 164):

> I herewith return your report on the subject of the Mexican boundary commission, with my concurrence, together with the papers accompanying the report. It seems to me that, in justification of the course which the Administration has

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been compelled to pursue, it might be well to give publicity to the report through the papers.

You will, of course, notify the Secretary of State.

The outcome of the President's sentence concerning publicity was that the Secretary of the Interior published in the National Intelligencer of October 16, 1852, his letter of October 11 to the President. With it he did not print Fillmore's letter quoted above, but an entirely different document, a formal note in the nature of an Executive order, dated October 13, 1852, and reading as follows (a copy of this Executive direction and a copy of the report referred to were transmitted by the Secretary of the Interior to the Secretary of State on October 15, 1852; D.S., Miscellaneous Letters, October 1852):

After a careful perusal of the foregoing Report and an anxious consideration of the question involved in it, I am reluctantly constrained to concur in its result; and consequently no part of the appropriation therein referred to can be drawn from the Treasury. The Secretary of the Interior will immediately notify the Secretary of State of this decision that he may inform the Mexican Government of the causes which compel this government to suspend the further prosecution of this work until Congress shall provide the requisite means.

With these documents should be read the report of the Senate Committee on Foreign Relations which led to the amendment concerning Disturnell's Map, together with editorials respecting the Mexican boundary situation, and all the documents in the report of the Secretary of the Interior dated March 21, 1853 (Daily Union, August 28, 1852, p. 3; *ibid.*, August 31, 1852, p. 3; *ibid.*, September 1, 1852, p. 3; Daily National Intelligencer, August 31, 1852, p. 3; *ibid.*, October 18, 1852, p. 2; Senate Executive Document No. 6, 33d Congress, special session of the Senate, serial 688).

Finally, President Fillmore, in his third annual message to Congress, dated December 6, 1852, quoted the proviso concerning Disturnell's Map in the act of August 31, 1852, and went on to say (Richardson, V, 173):

My attention was drawn to this subject by a report from the Department of the Interior, which reviewed all the facts of the case and submitted for my decision the question whether under existing circumstances any part of the appropriation could be lawfully used or expended for the further prosecution of the work. After a careful consideration of the subject I came to the conclusion that it could not, and so informed the head of that Department. Orders were immediately issued by him to the commissioner and surveyor to make no further requisitions on the Department, as they could not be paid, and to discontinue all operations on the southern line of New Mexico.

Disturnell's "Mapa de los Estados Unidos de Méjico", then, in its use in 1852 by the Secretary of the Interior, the President of the United States, and the Congress, made unavailable an appropriation of $120,000 and led to the discontinuation of boundary demarcation by the Commissions of the United States and of Mexico.

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The Plan of the Port of San Diego

By Colonel Lawrence Martin, Chief of the Division of Maps, Library of Congress, in collaboration with the editor

In Article 5 mention is made, as "added" to the treaty, of an authenticated copy of the Plan of the Port of San Diego [1] made in 1782 by Don Juan Pantoja and published at Madrid in 1802 "in the Atlas to the voyage of the schooners *Sutil* and *Mexicana*".

In the Library of Congress is an unpublished manuscript map of the Bay of San Diego which appears to be the original drawn at San Diego in September 1782 by Don Juan Pantoja y Arriaga, second pilot of the Spanish fleet, consisting of the vessels *Faborita* and *Princessa*, which visited and supplied the Spanish presidios and missions between San Diego and San Francisco in 1782. There is another and later manuscript copy of this map in the Mexican archives. Still another copy seems to have been the basis of the versions of this map published at London in 1789 in English, at Paris in 1797 in French, at London in 1799 in English, at Madrid in 1802 in Spanish, at Mexico City in 1825 in Spanish, and at Paris in 1844 in French.

The authenticated treaty copy of the Plan of the Port of San Diego which is mentioned in Article 5 is a tracing from the 1802 edition of the map of Pantoja; this is item No. 5 in the volume entitled "Atlas para el viage de las goletas Sutil y Mexicana al reconocimiento del estrecho de Juan de Fuca en 1792, publicado en 1802".

It seems that Captain Robert E. Lee, U.S.A., either made or directed the making of the tracing of 1848; a note written by Captain Lee to Trist, dated at Mexico City January 15, 1848, reads, "I return the volume from which the map was copied I handed you some days since" (Trist Papers, 28 : 61138); the time when it was agreed between Trist and the Mexican Commissioners that an authenticated copy of the map of Pantoja should be added to the treaty was between January 9 and 15, 1848; the tracing was made from the atlas of 1802; there is no record of the copying of any other map and no reason appears why any other map should have been copied; the conclusion appears well grounded that the brief note of Captain Lee referred to one of the two treaty copies of the Plan of the Port of San Diego, namely, that one which is in the archives of the Department of State and which is not signed by the copyist (see the reproduction facing p. 236); the other, in the Mexican archives, a photostat of which is in the Library of Congress, is signed by Romualdo Rivera.

The Full Powers

In the preamble of the treaty it is said that the Plenipotentiaries had made "a reciprocal communication of their respective full powers"; all that is written in the despatches of Trist regarding the full powers of the Mexican Commissioners is in his No. 27, of January 25, 1848, where the legal and constitutional basis of the then existing Mexican Government is discussed (see serial 509, pp. 280–81).

[1] Entitled "Plano del Puerto de S. Diego en la Costa Setentl de Californ? Levantado por el 2º Piloto de la Armada D. Juan Pantoja. Año 1782."

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As it was well known to the Mexican Government at the time that the authority of Trist had been revoked, the full power which he had received was not, when the treaty was signed, in force; its form was this (D.S., 3 Credences, 214):

James K. Polk, President of the United States of America,

To all whom these presents shall concern, Greeting:

Know Ye, That, desirous of restoring between the United States of America and the United Mexican States, peace, harmony and good correspondence, and of removing all grounds of dissatisfaction, and reposing special trust and confidence in the integrity, prudence and ability of Nicholas P. Trist, I have appointed him Commissioner of the United States to the Mexican Republic, and have invested him with full and all manner of power and authority, for and in the name of the United States to meet and confer with any person or persons having like authority from the Mexican Government, and with him or them to negotiate and conclude a settlement of the subsisting differences and a lasting treaty of peace, friendship and limits between the United States and the Mexican nation; whereby shall be definitively settled all claims of the citizens and government of the United States upon the Government of that nation, and all claims of that nation or of its citizens upon the Government of the United States; and likewise the limits and boundaries between the United States of America and the United Mexican States, and all matters and subjects therewith connected which may be interesting to the two nations; transmitting the treaty or convention so to be concluded for the ratification of the President of the United States, by and with the advice and consent of the Senate thereof.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed. Given under my hand at the City of Washington, the 15th day of April, in the year of our Lord one thousand eight hundred
(L.S.) and forty seven, and of the Independence of the United States the seventy first.

JAMES K. POLK.

By The President:
JAMES BUCHANAN,
Secretary of State.

The full powers of the Mexican Commissioners were dated December 30, 1847; the original thereof was exhibited to Trist on the evening of Sunday, January 2, 1848, and a copy was delivered to him on the following day (Trist Papers, 27 : 61012). The following text is from a certified copy (*ibid.*, 60909):

[Translation]

Pedro Maria Anaya, General de Brigada y Presidente interino de los Estados-Unidos Mexicanos.

Pedro María Anaya, General of Brigade and President *ad Interim* of the United Mexican States.

á todos los que el presente vieren, sabed,

To all who may see these presents, know ye:

Que estando resuelto, en uso de las facultades que al Presidente de la República Mexicana concede su Constitucion Federal, á anudar las negociaciones de paz que quedaron pendientes con el Gobierno interino del General de Division, Benemérito de la Patria Don Antonio Lopez de Santa Anna accediendo á la invitacion hecha al efecto por el Señor Don Nicolas P. Trist, Comisio-

That having resolved, in exercise of the powers which the Federal Constitution of the Mexican Republic grants to its President, to resume the peace negotiations which were left pending with the provisional Government of Don Antonio Lopez de Santa Anna, General of Division, well-deserving of his country, by accepting the invitation extended for that purpose by Mr.

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nado por el Gobierno de los Estados-Unidos de América; estando ya nombrados desde entonces, como Comisionados de la República, el General de Division Don José Joaquin de Herrera, el Licenciado Don José Bernardo Couto, el General de Brigada Don Ignacio Mora y Villamil y el Licenciado Don Miguel Atristain; y no pudiendo en el dia seguir en el desempeño de esa comision los Generales Herrera y Mora, el primero por hallarse enfermo, y el segundo por estar ocupado en el servicio del Ministerio de la Guerra y Marina: he venido en nombrar en lugar de ambos al General de Division Don Manuel Rincon y á Don Luis Gonzaga Cuevas, para que en union de los expresados Don José Bernardo Couto y Don Miguel Atristain, ya nombrados puedan continuar las conferencias y platicas de paz pendientes á fin de convenir y ajustar un Tratado que ponga término á la guerra que desgraciadamente existe entre ambas Naciones, dandoles y confiriendoles al efecto los plenos poderes necesarios, bajo las instrucciones que se les han comunicado ó en adelante se les comunicaren con la calidad de que cuanto convinieren y trataren quede sujeto á la aprobacion del Congreso Nacional y á la ratificacion consiguiente en los términos prevenidos por la Constitucion de la República y en el concepto de que la falta de alguno ó algunos de los cuatro comisionados nombrados no ha de impedir el curso y conclusion de estas negociaciones, pues los otros quedan autorizados para ello.

En fe de lo cual he mandado estender el presente, firmado de mi mano y autorizado por el Secretario de Estado y del Despacho de Relaciones interiores y exteriores, en el Palacio Federal de Querétaro á los treinta dias del mes de Diciembre del año del Señor de mil ochocientos cuarenta y siete, vigésimo-séptimo de la independencia.

P. M. Anaya.

Manuel de la Peña y Peña.

Es copia del original. México primero de Enero de mil ochocientos cuarenta y ocho.

Bdº Couto
Migl Atristain
Luis G. Cuevas

Nicholas P. Trist, commissioned by the Government of the United States of America; General of Division Don José Joaquin de Herrera, Licenciado Don José Bernardo Couto, General of Brigade Don Ignacio de Mora y Villamil, and Licenciado Don Miguel Atristain, being Commissioners of the Republic already appointed at that time; and Generals Herrera and Mora not being able at present to continue in the discharge of such commission, the former because of illness and the latter because of his being occupied in the service of the Ministry of War and Marine: I have decided to appoint, in place of these two, General of Division Don Manuel Rincón and Don Luis Gonzaga Cuevas, to the end that in concert with the said Don José Bernardo Couto and Don Miguel Atristain, already appointed, they may continue the pending conferences and discussions of peace for the purpose of agreeing upon and drawing up a treaty which may terminate the war which unfortunately exists between the two nations, giving them and conferring upon them the full powers necessary for that purpose, under the instructions which have been communicated to them or which may be communicated to them hereafter, on condition that whatever may be agreed upon and negotiated shall be subject to the approval of the National Congress and to subsequent ratification under the provisions of the Constitution of the Republic and with the proviso that the absence of one or more of the four Commissioners appointed shall not hinder the course and conclusion of these negotiations, since the others continue to be thereunto authorized.

In faith whereof I have caused these presents to be drawn up, signed by my hand, and attested by the Secretary of State for Domestic and Foreign Relations, in the Federal Palace at Querétaro on the thirtieth day of the month of December in the year of our Lord one thousand eight hundred and forty-seven, twenty-seventh of independence.

P. M. Anaya.

Manuel de la Peña y Peña.

Copy of the original. Mexico, January first, one thousand eight hundred and forty-eight.

Bdº Couto
Migl Atristain
Luis G. Cuevas

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The Exchange of Ratifications

Following the proceedings in the Senate, the authorities at Washington were fearful (unduly so, it now seems) that the Government of Mexico might refuse ratification of the treaty because of the amendments proposed by the Senate resolution of advice and consent and embodied in the United States instrument of ratification of March 16, 1848 (see Polk's Diary, III, 378, March 10, 1848).

The mission to exchange the ratifications was first tendered to Louis McLane, who declined (*ibid.*, 373, 375); it was then entrusted to Ambrose H. Sevier, Senator from Arkansas and Chairman of the Senate Committee on Foreign Relations. Sevier, under date of March 14, 1848, was appointed "Commissioner of the United States of America, with the rank of Envoy Extraordinary and Minister Plenipotentiary, to the Mexican Republic"; but owing to illness of Sevier, Nathan Clifford, of Maine, Attorney General (and subsequently Justice of the Supreme Court of the United States), was similarly commissioned four days later (D.S., 3 Credences, 227). Their full power to exchange the ratifications was joint and several (*ibid.*, 232). Both appointments were made with the advice and consent of the Senate (Executive Journal, VII, 341–43). Sevier resigned as Senator and Clifford as Attorney General.

The instructions given to the two Commissioners, first directed to Sevier but made joint and several on the same day, March 18, 1848 (D.S., 16 Instructions, Mexico, 84–94, 96–98), were elaborate; their text follows:

> You have been appointed by the President by and with the advice and consent of the Senate, to a most important and responsible mission. The task has thus been assigned to you of consummating the Treaty of Peace which was signed at Guadalupe Hidalgo on the second day of February, last, between the United States and the Mexican Republic, and which, on the 10th instant, was ratified by the Senate with amendments.
>
> This brief statement will indicate to you clearly the line of your duty. You are not sent to Mexico for the purpose of negotiating any new Treaty or of changing in any particular the ratified Treaty which you will bear with you. None of the amendments adopted by the Senate can be rejected or modified except by the authority of that Body. Your whole duty will then consist in using every honorable effort to obtain from the Mexican Government a ratification of the Treaty in the form in which it has been ratified by the Senate, and this with the least practicable delay.
>
> For this purpose, it may and most probably will become necessary, that you should explain to the Mexican Minister for Foreign Affairs, or to other authorized agents of the Mexican Government, the reasons which have influenced the Senate in adopting their several amendments to the Treaty. This duty you will perform as much as possible by personal conferences. Diplomatic notes are to be avoided unless in case of necessity. These might lead to endless discussions and indefinite delay. Besides, they could not have any practical result, as your mission is confined to procuring a ratification from the Mexican Government of the Treaty as it came from the Senate and does not extend to the slightest modification in any of its provisions.
>
> One of the principal reasons which induced me to address a note[1] to the Mexican Minister for Foreign Affairs in explanation of the amendments of the Senate, was to avoid delay and prevent unnecessary discussion. This note, dated on the 18th

[1] Printed above under the heading "Explanation of the Amendments".

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instant (with a copy of which you have been furnished) together with your own intimate and personal knowledge of all the proceedings of the Senate upon the Treaty, will enable you promptly to furnish every explanation which may be required.

Should you find it impossible, after exhausting every honorable effort for this purpose, to obtain a ratification from the President and Congress of Mexico of the Treaty as it has been amended by the Senate, it may then become necessary for you in conversation with the proper Mexican authorities to express an opinion as to what portion of the Senate's amendments they might probably be willing to yield for the sake of restoring peace between the two Republics. This will be a very delicate duty; but upon one point, at least, you will be relieved from all embarrassment. Neither the President nor the Senate of the United States can ever consent to ratify any Treaty containing the tenth article of the Treaty of Guadalupe Hidalgo in favor of grantees of land in Texas or elsewhere. The Government of the United States do not possess the power to carry such an article into execution; and if they did, it would be highly unjust and inexpedient. Should the Mexican Government persist in retaining this article, then all prospect of immediate peace is ended; and of this you may give them an absolute assurance.

In regard to the amendments by the Senate to the 12th Article of the Treaty, in relation to the mode of paying the $12.000.000, it is believed that the case might be different. That enlightened body would probably not insist on these amendments if it should appear that they involved the question of peace or war. That they may involve this question, is not improbable; but of this you can better judge upon the spot than the President can at this distance.

It is well known that the present Mexican Government are sorely straitened for want of the pecuniary means of support. Their revenues have been rightfully seized by the commanding general for the support of the United States army in Mexico, and they are thus left comparatively without resources. The Mexican Government are pledged to peace. They have staked their existence upon peace. Without peace they must be destroyed. It may be, however, that they cannot sustain themselves in making peace and executing the Treaty without anticipating the receipt of the whole or a part of the $12.000.000. Should this appear to you to be clearly the case, and that they cannot obtain the means necessary to prolong their existence under the amendments of the Senate to the 12th article, it is not supposed that you would incur any risk by assuring them that the Senate would recede from these amendments.

It cannot be denied that the twelfth article, as amended by the Senate, contains a positive and unconditional obligation on the part of the United States to pay to the Mexican Republic the sum of $12.000.000, in four annual instalments of three millions each, commencing one year after the ratification of the Treaty by the Mexican Government. Negotiable or transferable certificates cannot, however, be issued for that amount. All that this Government could possibly do under the Treaty as it now stands, would be to furnish the Mexican Government with evidences of the debt in exact conformity with the terms of the article as amended. Upon such evidences, it is believed that the Mexican Government might raise the means necessary for their immediate support. In this belief the President may be mistaken, because capitalists are a timid race. Should it appear to the Senate that such would probably prove to be the fact, it is confidently believed that they would not risk a defeat of the Treaty by adhering to their amendments to the twelfth article.

The remaining amendments, although doubtless highly proper, are comparatively unimportant. According to the President's understanding of that portion of the 9th Article as it originally stood, which relates to the Catholic Church, it contains nothing more than an amplification of the clauses contained in the Louisiana and Florida Treaties and in the amendment of the Senate to the present Treaty providing for the security of the Catholic inhabitants in the free exercise of their religion without restriction. In this view of the subject the amendment could not finally jeopard the fate of the present Treaty.

It is not deemed necessary to remark particularly on the remaining amendments.

Still, I repeat, that until you find this to be unattainable, you are to insist strenuously upon the ratification of the Treaty by the Mexican Government just

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as it has been ratified by the Senate. You might for this purpose urge upon them the following considerations, together with others which will suggest themselves to your own mind.

1. If this be done, the war will be promptly ended and the blessings of peace will be immediately restored. On the other hand, should the Treaty be sent back to the President to be again submitted to the Senate, this must occasion considerable delay and may altogether defeat the object.

2. Should the war be renewed, the Mexican Government can never again expect to make peace on terms so favorable as those contained in the present Treaty. In the opinion of a very large and increasing number of our fellow citizens, these terms are less favorable to the United States than we had a right to expect. The present Treaty was negotiated substantially in conformity with the ultimatum of my instructions dated on the 15th April, last, at a period when we had only just learned the capture of Vera Cruz and the Castle of San Juan d'Ulloa. Between that period and the date of the Treaty, circumstances had entirely changed and a vast amount of precious blood and of treasure had been expended in reaching and capturing the City of Mexico. Whilst for this reason the President might have justly exacted far more rigorous terms, yet such was his desire to conclude peace that he promptly assented to all the material provisions of the present Treaty and submitted it to the Senate. Should the war be renewed, instead of purchasing at a fair price a portion of the territories which we have been obliged to conquer and which are now in our undisturbed possession, and restoring the remainder to Mexico, we shall be compelled to appropriate, without pecuniary compensation, a just and ample indemnity in Mexican territory for all the expenses of the war.

Although the President has the most entire confidence in your sagacity, ability and discretion, yet it is deemed proper to make some suggestions to you in regard to the conduct which you ought to pursue in accomplishing the objects of your mission.

The Mexicans are a sensitive and suspicious people. They are now humbled in their own estimation by our brilliant and repeated victories. Their jealousy ought to be allayed by treating them, in all your intercourse, with marked respect. All the external forms of civility to which the Spanish race attach such peculiar importance, ought to be strictly observed by you. This will not only promote the success of your mission, but may be the foundation of a lasting peace and sincere friendship between the two Republics.

Whilst in Mexico, you will communicate freely and unreservedly with the commanding general of the American forces, who will be instructed to render you all the aid in his power, in accomplishing the object of your mission.

You will bear with you a copy of the Treaty with the amendments of the Senate ratified in due form by the President of the United States, together with a full power to exchange the ratifications with any Mexican authority clothed with a like full power from his Government to perform this duty. After the exchange of ratifications, you will return to the United States with the copy of the Treaty ratified by the Mexican Government, which you shall have received.

Should the Mexican Government ratify the Treaty with the amendments of the Senate, striking out its tenth article, and should refuse to ratify all or any of the remaining amendments, you will, then, notwithstanding, urge them to send without delay a Commissioner or other diplomatic agent to the United States clothed with full power to exchange ratifications in the City of Washington, in case the Senate should advise and consent to the ratification of the Treaty, in the form in which it shall have been ratified by Mexico.

Upon reaching the City of Mexico, you will immediately address a note to the Mexican Minister for Foreign Affairs apprizing him of your arrival and of your readiness to confer, without delay, on the subject of your mission, either with himself or with any authorized agent of the Mexican Government, at any place which may be designated.

In regard to the first three millions of the fifteen millions of dollars secured to the Mexican Government by the twelfth article of the Treaty as amended, provision has already been made for its payment under the authority which has been given to Major General William O. Butler by the Secretary of the Treasury to draw on the Treasury of the United States for that amount. General Butler's

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draft, which will be promptly honored on presentation, you may deliver to the appropriate Mexican authorities immediately after the Treaty with the amendments of the Senate shall have been duly ratified by the Mexican Government. As the disbursement of so large a sum is a matter of great importance, you should use every precaution to be certain that the draft shall be drawn in favor of the proper Mexican functionary and that the whole business shall be transacted in such a manner that no difficulty can hereafter arise upon the subject. You will take receipts in triplicate for such draft, which ought, if possible, to be signed by the President of Mexico and countersigned by the Minister of Finance.

You are also furnished with four evidences of debt [1] from the Secretary of the Treasury dated on the 16th instant, for three millions of dollars each, corresponding with the four instalments to be paid to Mexico under the 12th Article of the Treaty as amended by the Senate. These evidences are in exact conformity with the Treaty. Should you discover that for the want of them serious impediments might exist to the ratification of the Treaty on the part of Mexico, you are then authorized to make known to the Mexican Government that they are in your possession and that you will deliver them over immediately after the exchange of ratifications. Still, the President would prefer that the Mexican Government should be satisfied with the obligation as it stands contained in the 12th Article. In that event, you will cancel these evidences and return them to this Department. Should you deliver them over, you will use all the precautions which I have suggested in relation to the draft for three millions of dollars.

The naval forces of the United States in the Pacific have captured Mazatlan and other places on the West coast of Mexico. These, by the terms of the Treaty must be surrendered. To avoid unnecessary delay in its execution, the Secretary of the Navy, by direction of the President has issued orders to the commander of these forces to evacuate all the ports and places in the Mexican territory on the Pacific which may be in his military possession south of the line of boundary established by the Treaty, as soon as he shall receive notice of the exchange of ratifications. You will, therefore, communicate to him a knowledge of this event as speedily as possible and at the same time transmit him a copy of the Treaty.

Even the instructions of March 18 were not deemed sufficient. Four days later, further instructions were given and a full power was issued (D.S., 3 Credences, 233) which authorized the Commissioners, or either of them, "to negotiate and conclude a Treaty changing the mode of payment of the twelve millions of dollars stipulated to be paid by the Government of the United States to that of the Mexican Republic by the twelfth article of the Treaty of Guadalupe Hidalgo as it has been amended by the Senate of the United States, in any manner which by them may be deemed expedient"; the instructions were in these terms (D.S., 16 Instructions, Mexico, 98–99):

Referring to my instructions of the 18th instant relative to the amendments made by the Senate to the 12th article of the Treaty, in regard to the mode of payment of the $12.000.000, the President has deemed it proper to give you additional instructions upon this subject.

The Mexican Government may, notwithstanding all your efforts, refuse to ratify the Treaty because of these amendments to the twelfth article. In that event you are authorized to conclude a new Treaty with the Mexican Government adopting either the first or the second mode of payment of the $12.000.000 prescribed by the twelfth article as it stood originally, *provided that Government shall have first ratified the original treaty with all the amendments adopted by the Senate.* In case you should conclude such a Treaty, it ought immediately to be ratified by Mexico and a ratified copy be brought to Washington at the same time with

[1] These evidences of debt were not delivered, but were returned and canceled; for their form, see Senate Executive Document No. 50, 30th Congress, 2d session, serial 541, pp. 80–82.

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the ratified copy of the Treaty which you shall have received in exchange from the Mexican Government for the copy ratified by the President.

It is not doubted by the President that the Senate would immediately advise and consent to the ratification of the new Treaty which may be concluded by you. By this expedient, in case it should become necessary to resort to it, a delay of six weeks or two months in the final conclusion of peace might be avoided.

A full power to you or either of you to conclude such a Treaty is herewith furnished.

According to my instructions of the 18th instant, Mr Sevier, after the exchange of the ratifications, is directed to return to the United States with the copy of the Treaty ratified by the Mexican Government. In that event Mr Clifford will not accompany him, but will remain in Mexico until he shall receive further instructions.

Clifford arrived at Mexico City on April 11, 1848; he reported that the amendments of the Senate "as published in the New York Herald, were translated a few days since into the principal journal of the city, and appear not to have excited the least opposition" (D.S., 13 Despatches, Mexico, No. 3, April 12, 1848); Sevier arrived on April 15; communications with the Mexican Minister of Foreign Relations, Luis de la Rosa, began two days later (*ibid.*, Nos. 4 and 5, April 18 and May 7, 1848); that correspondence from April 17 to May 21, 1848, is printed in Senate Executive Document No. 50, 30th Congress, 2d session, serial 541, pages 57–61, 72–74; the only reference therein to the amendments to the treaty is in the opening note, cited in the next paragraph.

In their first note, of April 17, to the Mexican Minister of Foreign Relations (despatch No. 5, cited above, enclosure), the American Commissioners transmitted the note addressed to him by Secretary of State Buchanan under date of March 18, "explanatory of the said amendments", adding:

> It is presumed that this communication embraces all the information which may be desired by the Mexican Govt in regard to the amendments to the treaty of peace. If, however, further explanations are wished, the Undersigned will be prepared to give them promptly to the Min: of F.R. or other authorized agents of the Mexican Republic at such convenient place as the Mexican Govt may designate.

The seat of the Mexican Government was then at Querétaro. The American Commissioners remained at Mexico City awaiting an invitation to Querétaro for the presentation of their credentials to the President of Mexico, Manuel de la Peña y Peña; this ceremony was postponed until favorable action on the treaty by the Mexican Congress was assured; that body assembled on May 7. Under that date the Commissioners reported (D.S., 13 Despatches, Mexico, No. 5) that the amendments of the Senate "do not appear to attract much attention, and it is not supposed that they will constitute any serious obstacle to the Consummation of the treaty"; the presidential message to the Congress of Mexico at the opening of the sessions recommended acceptance of the amendments (Senate Executive Document No. 50, 30th Congress, 2d session, serial 541, pp. 62–72); on May 19 the House of Deputies, by 51 votes to 35, approved the treaty as amended; the Senate, by 33 votes to 4, took action to the

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same effect on May 25; and at about the same hour of that day the American Commissioners arrived at Querétaro, 120 miles from Mexico City (D.S., 13 Despatches, Mexico, Nos. 8 and 10, May 21 and 25, 1848, where the figures given for the votes are inexact; see Clifford, Nathan Clifford, Democrat, 183–85; Roa Bárcena, *op. cit.*, 623, 627; Apuntes para la historia de la guerra, 394–95).

On May 26 Clifford (Sevier being ill) was presented to the President of Mexico. There followed conferences and a protocol thereof (discussed below) dated at Querétaro May 26, 1848. Four days later, on Tuesday, May 30, the ratifications were exchanged. The report of the Commissioners of the same date enclosed copies of their communications to the various military and naval commanders of the forces of the United States informing them of the consummation of the exchange of ratifications and included these passages (D.S., 13 Despatches, Mexico, No. 11):

In our last we had the honor to inform you of our arrival in this city on the 25th inst. On the following day at 12 o'clock meridian, in pursuance of a previous arrangement, Mr Clifford was presented to the President of the Republic by Mr Rosa, the Secretary of Foreign Relations, in presence of the Cabinet and a large number of the civil and military officers of the Government, and placed our credentials in the hands of His Excellency. Mr Sevier was prevented by indisposition from being present on the occasion. We enclose a copy of our address to the President, and also a copy of his reply. Several conferences afterwards took place between Messrs Rosa, Cuevas and Couto and ourselves, which it is not thought necessary to recapitulate, as we enclose a copy of the protocol which contains the substance of the Conversations. We have now the satisfaction to announce that the exchange of ratifications was effected to-day. Some delay occurred after the conferences in the preparation of the Mexican Copy [instrument of ratification] of the treaty. That was finally accomplished within the last hour, when the exchange of ratifications was duly made by Mr Rosa in behalf of the Mexican Government, and ourselves on the part of the United States.

Having accomplished our duties here, we shall return immediately to the City of Mexico for the purpose of paying over the three millions according to the stipulations of the treaty. It is expected that the Mexican Government will appoint a Commissioner to repair to the city, in company with us, to receive the payment. No circumstances are foreseen by us to render it necessary to use the papers furnished by the Treasury Department in regard to the remaining twelve millions.

In one of the conferences Mr Rosa urged with much force the dangers of disorder in the City of Mexico in case our army should retire before the Mexican authorities had taken the necessary precautions.

The act of exchange was drawn up in English and Spanish with careful observance of the *alternat*. The English version is this:

Whereas the Treaty between the United States of America and the Mexican Republic signed at Guadalupe Hidalgo on the second day of February, eighteen hundred and forty-eight has been ratified by the President with the amendments made by the Senate of the United-States, and whereas the same Treaty and amendments have been ratified by the President with the approbation of the congress of the Mexican Republic.

Now therefore be it known that the undersigned having been duly empowered by our respective Governments, have this day with all suitable solemnities and after due comparison each with other and both with the original example of the said Treaty exchanged the said ratifications.

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In witness thereof we have signed this act in the english and castilian languages and have sealed the same with our respective seals at Querétaro this thirtieth day of May eighteen hundred and forty-eight

[Seal] A H Sevier
[Seal] Nathan Clifford
[Seal] Luis de la Rosa

On the day of the exchange, the treaty was promulgated at Querétaro (see Algunos documentos sobre el Tratado de Guadalupe, 136–37).

The Protocol of Querétaro of May 26, 1848

As stated previously, there are in the treaty file two examples of the protocol dated at Querétaro May 26, 1848; they differ slightly and immaterially in matters of capitalization, spelling, and abbreviation; there are also some variances of punctuation, none of which appears to have any significance. From one of them has been torn a small portion of the Spanish version. It is the more perfect original, marked "Duplicate", which has been used for collating here. The only textual differences are four or perhaps five; in the first numbered clause of the English version the imperfect original has "Guadalupe Hidalgo" where the other original has "Guadalupe"; in the same clause the latter original omits "is" after "understanding"; in the first paragraph of the second numbered clause of the English of the imperfect original the word "titles" is omitted; in the first numbered clause of the Spanish of the imperfect original "mismos" is written for "dichos"; and it seems that from the Spanish of the third numbered clause of the imperfect original there was omitted the word "mismo". The text of the protocol follows:

Protocol

In the city of Queretaro on the twenty sixth of the month of May eighteen hundred and forty-eight at a conference between Their Excellencies Nathan Clifford and Ambrose H. Sevier Commissioners of the United States of America, with full powers from their Government to make to the Mexican Republic suitable explanations in regard to the amendments which the Senate and Government of the said United States have made in the treaty of peace, friendship, limits and definitive settlement between the two Republics, signed in Guadalupe Hidalgo, on the second day of February of the present year, and His Excellency Don Luis de la Rosa, Minister of Foreign Affairs of the Republic of Mexico, it was agreed, after adequate conversation respecting the changes alluded to, to record in the present protocol the following explanations which Their aforesaid Excellencies the Commissioners gave in the name of their Government and in

En la Ciudad de Queretaro á los veinte y seis dias del mes de Mayo del año de mil ochocientos cuarenta y ocho reunidos el Escelentisimo Señor Dn Luis de la Rosa, Ministro de Relaciones de la Republica Mexicana y los Escelentisimos Señores Nathan Clifford y Ambrosio H. Sevier, comisionados con Plenos Poderes del Gobierno de los Estados unidos de America para hacer al de la Republica Mexicana las esplicaciones convenientes sobre las modificaciones que el Senado y Gobierno de dichos Estados unidos han hecho al Tratado de paz, amistad, limites y arreglo definitivo entre ambas Republicas, firmado en la Ciudad de Guadalupe Hidalgo el dia dos de Febrero del presente año; despues de haber conferenciado detenidamente sobre las indicadas variaciones, han acordado consignar en el presente protocolo las siguientes esplicaciones, que los espresados Escelentisimos Señores co-

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fulfillment of the Commission conferred upon them near the Mexican Republic.

FIRST.

The american Government by suppressing the IXth article of the Treaty of Guadalupe and substituting the III. article of the Treaty of Louisiana [1] did not intend to diminish in any way what was agreed upon by the aforesaid article IXth in favor of the inhabitants of the territories ceded by Mexico. Its understanding that all of that agreement is contained in the III^{d} article of the Treaty of Louisiana. In consequence, all the privileges and guarantees, civil, political and religious, which would have been possessed by the inhabitants of the ceded territories, if the IXth article of the Treaty had been retained, will be enjoyed by them without any difference under the article which has been substituted.

SECOND.

The American Government by suppressing the Xth article of the Treaty of Guadalupe did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the Treaty, preserve the legal value which they may possess; and the grantees may cause their legitimate titles to be acknowledged before the american tribunals.

Conformably to the law of the United-States, legitimate titles to every description of property personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican law in California and New-Mexico up to the 13th of May 1.846, and in Texas up to the 2^{d} March 1.836.

THIRD.

The Government of the United States by suppressing the concluding paragraph of article XIIth of the Treaty, did not intend to deprive the Mexican Republic of the free and unrestrained faculty of ceding, conveying or transferring at any time (as it may judge best) the sum of the twelfe millions of dollars which the same Government of the United-States

[1] Document 28.

misionados han dado en nombre de su Gobierno y desempeñando la comision que este les confirió cerca del de la Republica Mexicana.

PRIMERA.

El Gobierno americano suprimiendo el articulo IX del Tratado de Guadalupe, y substituyendo á él el articulo III del de la Luisiana,[1] no ha pretendido disminuir en nada lo que estaba pactado por el citado articulo IX en favor de los habitantes de los territorios cedidos por Mexico. Entiende que todo eso está contenido en el articulo III del Tratado de la Luisiana. En consecuencia todos los gozes y garantias que en el orden civil, en el politico y religioso tendrian los dichos habitantes de los territorios cedidos, si hubiese subsistido el articulo IX del Tratado, esos mismos sin diferencia alguna tendrán bajo el articulo q. se ha substituido.

SEGUNDA.

El Gobierno americano suprimiendo el articulo X del Tratado de Guadalupe, no ha intentado de ninguna manera anular las conceciones de tierras hechas por Mexico en los territorios cedidos. Esas conceciones, aun suprimido el articulo del Tratado, conservan el valor legal que tengan; y los concesionarios pueden hacer valer sus titulos legitimos ante los Tribunales americanos.

Conforme á la ley de los Estados unidos son titulos legitimos en favor de toda propiedad mueble ó raiz ecsistente en los territorios cedidos, los mismos que hayan sido titulos legitimos bajo la ley mexicana hasta el dia 13. de Mayo de 1.846. en California y en Nuevo Mexico y hasta el dia 2. de Marzo de 1.836. en Tejas.

TERCERA.

El Gobierno de los Estados unidos suprimiendo el parrafo con que concluye el articulo XII del Tratado, no ha entendido privar á la Republica Mexicana de la libre y expedita facultad de ceder, traspasar ó enagenar en cualquier tiempo (como mejor le parezca) la suma de los doce millones de pesos que el mismo Gobierno de los

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is to deliver in the places designated by the amended article.

And these explanations having been accepted by the Minister of Foreign Affairs of the Mexican Republic, he declared in name of his Government that with the understanding conveyed by them, the same Government would proceed to ratify the Treaty of Guadalupe as modified by the Senate and Government of the United States. In testimony of which their Excellencies the aforesaid Commissioners and the Minister have signed and sealed in quintuplicate the present protocol.

[Seal] A. H. SEVIER.
[Seal] NATHAN CLIFFORD
[Seal] LUIS DE LA ROSA

Estados unidos debe entregar en los plazos que expresa el articulo XII modificado.

Y habiendo aceptado estas explicaciones el Ministro de Relaciones de la Republica Mexicana, declaró en nombre de su Gobierno que bajo los conceptos que ellas importan, vá á proceder el mismo Gobierno á ratificar el Trado de Guadalupe segun ha sido modificado por el Senado y Gobierno de los Estados unidos. En fé de lo cual firmaron y sellaron por quintuplicado el presente protocolo los Escelentisimos Señores Ministro y comisionados ante-dichos.

[Seal] LUIS DE LA ROSA
[Seal] A. H. SEVIER.
[Seal] NATHAN CLIFFORD

The protocol was first written in Spanish and this was then translated into the English. In its text only one conference is mentioned, but there were at least two; the Commissioners, in their despatch No. 11, of May 30, 1848, above quoted, speak of "several"; the first was held at the residence of the Mexican Minister of Foreign Relations during the evening of May 26; besides the Minister, Luis de la Rosa, there were present Luis Gonzaga Cuevas and Bernardo Couto, two of the Plenipotentiaries who had signed the treaty; of the American Commissioners, only Clifford was in attendance, as Sevier was ill. In a letter of that date to his wife, Clifford speaks of this conference as the "official *talk* with Señor Rosa", adding that he had strong hopes that the ratifications would be exchanged the next day (May 27), permitting the American Commissioners to leave for Mexico City "on Sabbath morning", May 28 (Clifford, Nathan Clifford, Democrat, 184–85). The second conference was held at the residence of the American Commissioners on May 27; on this occasion Sevier was present with the others named and was the spokesman. The suggestion of a protocol was then put forward by the Mexican Minister of Foreign Relations and was accepted. Whether the protocol was written on that occasion or subsequently is not clear (see the note of Clifford of April 30, 1849, cited and printed below). Neither of the two American Commissioners knew Spanish; but their Secretary of Legation, Robert M. Walsh, was well acquainted with the language.

The treaty was communicated to Congress with the presidential message of July 6, 1848, recommending legislation in aid of its execution (Richardson, IV, 587–93). The accompanying papers did not include a copy of the protocol, although among them was the despatch of the American Commissioners of May 30, 1848, quoted above, in which the protocol is mentioned as an enclosure (House Executive Document No. 69, 30th Congress, 1st session, serial 521). The request of the House of Representatives of July 17, 1848, for the instructions given to Sevier and Clifford, was refused by Polk on July 29 as "inconsistent with the public interests" (Richardson,

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IV, 602–3). At the following session, however, the protocol came to the attention of members of Congress from a print of it in the press (Polk's Diary, IV, 319–20, February 3, 1849); it might well have been noticed sooner, as it had been published at Mexico City more than eight months previously; the strange idea was broached that the protocol had the effect of "abrogating the Mexican Treaty" (*ibid.*, 328); somewhat elaborate resolutions requesting information were passed by the respective Houses of Congress (Congressional Globe, XVIII, 437–38, 442, 448–54, 456–57; see Polk's Diary, IV, 319–30, *passim*); all the relevant papers were communicated to the House of Representatives with a message of February 8; and papers were sent to the Senate with a message of February 9, 1849 (Richardson, IV, 679–87; see Congressional Globe, XVIII, 494–97, February 10, 1849). The message to the House and the accompanying papers are printed in House Executive Document No. 50, 30th Congress, 2d session, serial 541.

In that message it was pointed out that the final action of the Mexican Congress on the treaty had taken place before the American Commissioners had held any conference with the Mexican authorities and that the only explanations of the Senate amendments made by this Government which were before the Mexican Congress were those contained in the note of Secretary of State Buchanan of March 18, 1848; it was said that the protocol, if it had varied the treaty as amended, would have had no binding effect, that the American Commissioners did not regard the protocol as a part of the treaty or as modifying the treaty as amended, and that the Mexican Government likewise did not regard the protocol as modifying the treaty terms; the various clauses of the protocol were then reviewed in detail and defended; the concluding paragraph of the message is as follows:

> With this view of the whole protocol, and considering that the explanations which it contained were in accordance with the treaty, I did not deem it necessary to take any action upon the subject. Had it varied from the terms of the treaty as amended by the Senate, although it would even then have been a nullity in itself, yet duty might have required that I should make this fact known to the Mexican Government. This not being the case, I treated it in the same manner I would have done had these explanations been made verbally by the commissioners to the Mexican minister for foreign affairs and communicated in a dispatch to the State Department.

Following the presidential message to the House of Representatives of February 8, 1849, there ensued a diplomatic correspondence regarding the protocol; this correspondence was had between Luis de la Rosa, then Mexican Minister at Washington, who had himself signed the protocol, and the Secretary of State (James Buchanan until March 7, 1849, and John M. Clayton thereafter). Seven notes were written, five by the Mexican Minister (February 10, 14, 23, and 24, and May 3, 1849) and two by the Secretary of State (February 15 and April 11, 1849). These notes are printed, the former in translation, in Senate Executive Document No. 1, 31st Congress, 1st session, serial 549, pages 69–89. The following excerpts from certain of them will indicate the principal points raised on the one side and on the other (those

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from the notes of the Secretary of State are collated with the record copies in D.S., 6 Notes to the Mexican Legation, 197–202, 205–21):

[*Mr. de la Rosa to Mr. Buchanan, February 10, 1849*]

[Translation]

The Government of the undersigned might be, to a certain extent, reassured, on seeing in the message of His Excellency the President, addressed to the House of Representatives, that the Government of the United States gives to certain articles of the Treaty of Guadalupe the same sense and the same understanding which should be given to them agreeably to the explanations assigned in the protocol above mentioned. But as there are, at the same time, in that message certain passages from which it may be inferred that no value is attributed to the protocol in question, the undersigned believes that these expressions will exceedingly alarm his Government and may possibly occasion a serious and dangerous agitation among the Mexican people.

In order to avert this evil and its consequences, the undersigned anxiously desires to be enabled to assure his Government, in a manner firm, clear, and positive, that the Government of the United States will never give to the articles and modifications of the treaty to which the protocol relates any other sense or other interpretation than that resulting from the explanations of the said articles and modifications which were given by the Plenipotentiaries of the United States on signing the protocol in question at Querétaro.

[*Mr. Buchanan to Mr. de la Rosa, February 15, 1849*]

The President will be ever ready, in the kindest spirit, to attend to all representations of the Mexican Government communicated in a form which does not interfere with his own rights or those of Congress. It is to vindicate a great principle which he deems essential to the free and harmonious working of our institutions, that he has resolved upon the answer which I communicate to you upon the present occasion. His desire to cultivate the most amicable relations with Mexico has been evinced by his whole course of conduct ever since the termination of the late war. There is no wish nearer his heart than that Mexico may be a great and prosperous Republic bound to the United States in bonds of the most intimate and equal friendship. So far as depends upon himself, it has ever been his determination to execute every part of the late Treaty in the strictest good faith; and certainly no portion of it is less liable to cavil or doubt than the three points explained by our Commissioners in the Protocol. If in the process of time any case should arise, an event deemed highly improbable, which might cause the Mexican Government to suppose either that the perfect and absolute freedom of religion and security of property will not be guarantied to former Mexican citizens within the ceded territory; or that valid and legitimate grants of land made by the Mexican Government within this territory will not be acknowledged and enforced by our Judicial Tribunals; or that the United States will attempt to interfere with the right vested in that Government, in common with every other creditor, of transferring to whomsoever they may please, the whole or any part of the debt of $12.000000 referred to in the Treaty; all that will be necessary is to specify the points of supposed difficulty either through their Minister in this country or through our Minister in Mexico, and these will be promptly and I have no doubt satisfactorily answered.

[*Mr. de la Rosa to Mr. Buchanan, February 24, 1849*]

[Translation]

The undersigned will not enter into the discussion of the question whether the explanations thus recorded in this document, and the understanding therein

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given to certain articles of the treaty, are or are not at variance with the intention and design of the Senate of the United States, which modified those articles. The Government of Mexico could never suppose that the Plenipotentiaries of the United States could have been capable of exceeding the limits of their faculties and instructions by signing the protocol and guaranteeing the stipulations contained in it with their respective seals and signatures. The Government of Mexico treated with the Commissioners of the United States in the utmost good faith; and after assurance of the fullness of their powers, and in order to avoid every species of doubt on that point, the Mexican Government took care to have inserted in the protocol itself a declaration establishing the fact that the representatives of this Republic concluded that convention in the character of "Commissioners of the United States of America, with full powers from their Government to make to the Mexican Government suitable explanations in regard to the amendments which the Senate and Government of the said United States" had made in the treaty. It is also declared and recorded in the same document, that the said explanations were given by the Plenipotentiaries in the name of their Government and in fulfilment of the commission conferred upon them near the Mexican Republic. What may have been the secret instructions given them for the fulfilment of this commission, no one could then have known except the Plenipotentiaries themselves and the Government of the United States. The undersigned has insisted so strongly upon this point because he cannot agree that the convention concluded in the protocol should be null if it in any way alters the modifications which the Senate of the United States had made in certain articles of the treaty. As, in the message of His Excellency the President of the United States, the circumstance that the Mexican Government had not presented the protocol to the Congress of the Republic for its ratification is regarded as a proof that the Government did not consider the modifications made by the Senate as altered, the undersigned must say upon this point that the Government of Mexico never believed such ratification to be necessary for the validity and subsistence of the protocol. All that is therein stipulated is so favorable (comparatively speaking) to the rights and interests of Mexico that no doubt could possibly have been entertained of its ratification by the Mexican Congress if such ratification had been necessary. The Mexican Government, whose part it is to direct diplomatic negotiations in the manner most suitable, according to its judgment, to the interests of the country, fulfilled its duty by communicating to Congress the result of the conferences which were held with the Plenipotentiaries of the United States. The undersigned remembers that in the morning of the same day in which the ratifications of the treaty of peace were exchanged, the Minister of Foreign Relations presented himself to each of the Houses of the Mexican Congress and read in open session the protocol, in consequence of which, as he declared, he was about to ratify the Treaty of Guadalupe. The President of each of the Houses of Congress then said, in answer, that the Chamber, on being informed of what had been done, saw with pleasure the result of the conferences, and then ordered the protocol to be placed on record among the archives. No Deputy nor Senator protested against this proceeding; and the undersigned should observe to the Honorable Secretary of State that agreeably to the law which regulates the debates and the internal government of the Congress of Mexico, whenever the President of either House gives a certain course or adopts any resolution with regard to any affair, and no Deputy or Senator objects to it, the resolution is considered as sanctioned. From all this it may be clearly seen that the protocol not only was approved by the Mexican Congress, but was approved with satisfaction, and that this approval was given previous to the ratification of the Treaty of Guadalupe. The Mexican Government soon afterwards had the treaty of peace officially published, as well as the protocol in continuation of it, and no one, to this day, has doubted in Mexico that this protocol has been approved by the Congress.

[*Mr. Clayton to Mr. de la Rosa, April 11, 1849*]

The receipt of that money towards payment for the Territories ceded by the Treaty was of itself an acknowledgement by Mexico that the Treaty as it came

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from the Senate of the United States, was fully ratified by her. As notice was given to her by the letter of the Secretary of State as well as by the provisions of the Constitution of the United States and the powers of our Commissioners, that any new stipulation, varying from the Treaty as amended by the Senate could form no part of that instrument until approved by that Body, it follows that by receiving these Three Millions of Dollars, she acknowledged that she had made a valid Treaty with the United States, whether the Protocol should form a part of it or not. How could Mexico with honor receive the indemnity stipulated by the Treaty if she intended at the time to take advantage of any contingency such as the rejection of the Protocol by the Senate, and to maintain that there was no treaty whatever binding her? Would she not be chargeable with the grossest imputations were she now to persevere in maintaining that though she has received millions for the Territory ceded, she will invalidate the title she has given us and reclaim the country we have purchased of her? Justice to Mexico forbids the supposition that she could adopt such a policy. All the right which she could have possibly acquired by the Protocol, (if indeed it was intended by it, to lay the foundation for an alteration in the Treaty) was a right to make such a proposition, with the consent of the Commissioners, to the Government of the United States. In that view of the subject, she took the hazard of our rejecting it, being fully aware of our perfect right to do so, without injury to her. This Government has refused to ratify it, and of this she has no right to complain. This Government has at no time regarded the Protocol as obligatory. The ratification of the Treaty by the Mexican Government was brought to this Country, and that instrument was proclaimed precisely in the form in which it was amended by the Senate of the United States. The Protocol appears to have been viewed as a mere record of conversations, and by no means as establishing a condition precedent to the ratification of the Treaty by the Mexican Government. In the course of the late session of Congress, the President communicated to each House a copy of that instrument, but neither thought proper to acknowledge it as obligatory upon the United States. After it had been communicated to the House of Representatives, that Body passed a Bill appropriating the money due under the Treaty on the 30th May, 1849, and 1850, and the same bill afterwards passed the Senate and has become a law. It must be presumed that if either House of the Congress of the United States had supposed that the Treaty as amended by the Senate, had been vitiated or in any way affected by the Protocol, they would not have made the appropriation adverted to, for no obligation therefor would have rested upon them. At the recent Executive session of the Senate of the United States, a Resolution was offered declaring the Protocol to be a part of the Treaty. This Resolution was laid upon the table and thus effectually rejected without a division. Under all these circumstances, therefore, the undersigned, actuated by that spirit of frankness which ought ever to characterize the diplomacy of the United States and resolved to give no room for any possible imputation upon the honor of this government, which could arise out of silence or acquiescense in the claim set up by Mexico that this Protocol signed at Queretaro on the 26th of May, last, by the Commissioners of the United States and the Minister for Foreign Affairs of the Mexican Republic, is a paper of any validity or effect, has the honor explicitly to declare to Mr de la Rosa, that inasmuch as that instrument does not on its face purport to be a diplomatic Convention, as it was not concluded according to the forms usually observed in negotiating or by men having power to make such Conventions; as it has not been approved by the Senate of the United States and the Congress of Mexico, or ratified by the President of either Republic agreeably to the requirements of their respective Constitutions, it is not and will never be held to be binding in honor or in law upon the Congress or the Executive of the United States.

It is not the province of the undersigned to anticipate the view which may be taken of that instrument by the Judiciary in such cases under the Treaty of Guadalupe Hidalgo as may be carried before them for consideration and decision

In the exercise of the high prerogative of construing treaties as well as other laws, conferred upon them by the constitution, their opinions in regard to the Treaty as ratified and exchanged by the two governments, may or may not harmonize with those expressed in the protocol, but it cannot be believed that they will deem it their duty to construe the Treaty by that instrument. And if their

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judgments should fail to award to Mexicans the rights which their government may suppose to have been secured to them by the Protocol, the Government of the United States holds itself absolved from any obligation to make amends therefor. Mr de la Rosa, however will not understand that the undersigned undertakes either to affirm or deny the soundness of the opinions expressed in the Protocol. This is the less incumbent on him from the fact, that Mr de la Rosa himself has not yet pointed out the differences, between those opinions and the meaning conveyed by the amendments of the Senate.

[*Mr. de la Rosa to Mr. Clayton, May 3, 1849*]

[Translation]

The importance of that note from the Honorable Secretary of State is such as not to allow the undersigned to answer it without first submitting it to his Government.

The undersigned has, in consequence, transmitted the said note from the Honorable Secretary of State to the Minister of Foreign Relations of Mexico, and he abstains, for the present, from any reply to it.

While the foregoing correspondence was in course, the subject of the protocol was again brought forward in the Senate during the special session which began on March 5, 1849, following the inauguration of President Taylor; papers were twice requested and furnished (Executive Journal, VIII, 90, 92, 94); the resolution of Senator Thomas H. Benton, of Missouri, to the effect that the protocol "ought to be held as binding upon the United States", was laid on the table (*ibid.*, 94–95, March 22, 1849); it was later said by a participant in the debate that the vote was unanimous, except for Benton himself (see Casket of Reminiscences, 337, a work by Henry S. Foote, Senator from Mississippi, 1847–52); but the account of the preceding circumstances as written in the work cited cannot wholly be reconciled with the relevant dates, for Clayton entered upon his duties as Secretary of State on March 8, 1849. The attitude of Benton toward the Treaty of Guadalupe Hidalgo is somewhat obscure; he speaks of it and of Trist in terms of commendation (Thirty Years View, II, 710–11); but he had voted in the Senate against the resolution of advice and consent and in favor of the amendments to Article 12 (Executive Journal, VII, 335–36, 340).

The position taken by the Polk administration regarding the protocol is further elucidated by two instructions to Clifford (who had remained at Mexico City as American Minister) dated, respectively, February 17 and March 2, 1849, the relevant paragraphs of which follow (D.S., 16 Instructions, Mexico, 122–29):

[Instruction No. 14, February 17, 1849, excerpt]

I enclose you copies of two extraordinary notes addressed by Mr de la Rosa to myself on the 12th [10th] and 14th instant, together with a copy of my answer to them dated on the 15th instant. These, together with a copy of the Union of the 9th instant containing the President's Message to the House of Representatives on the subject of the 'Protocol,' which is also enclosed, will enable you to make any explanations to the Mexican Government which may become necessary.

For a few days, the most absurd and unfounded rumors were circulated in regard to this Protocol and for a brief period made some impression on the public

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mind. This has, I think, been entirely removed by the publication of the President's Message and the documents which accompanied it. Still, it would seem that Mr de la Rosa is highly excited on the subject, and may therefore make representations to his Government which it will be your duty to counteract. Your perfect familiarity with the whole subject renders it unnecessary for me to make any further observations respecting it.

I anticipate that Mr de la Rosa will reply to my note of the 15th instant. If he should, I shall immediately transmit you a copy of his reply with that of my rejoinder, should one become necessary.

[Instruction No. 15, March 2, 1849, excerpt]

I enclose to you copies of two notes, the one of the 23d and the other of the 24th ultimo, received at the Department from Mr de la Rosa, since the date of my last despatch.

It is difficult to conceive what can be the object of Mr de la Rosa in pursuing so pertinaciously the question of the Protocol. He no where states or even intimates in what particular the explanations contained in it are, in his opinion, at variance with the amendments of the Senate to the original Treaty. Indeed, he expressly declares that he "will not enter into the discussion of the question whether the explanations thus recorded in this document and the understanding therein given to certain articles of the Treaty, are or are not, at variance with the intention and design of the Senate of the United States which modified those articles".

The President, in his Message to the House of Representatives of the 8th February, last, expresses the opinion that these explanations are in accordance with the Treaty and gives his reasons for this opinion. If this be correct, as we believe it to be, then no practical question can ever arise between Mexico and the United States on the subject of the Protocol. Why, then, the pertinacity of Mr de la Rosa? Does he not believe that he has gained some advantage over Mr Sevier and yourself by the Protocol, but this of a character which he is unwilling to specify?

The first rumors circulated in this City concerning the Protocol were that it had annulled the amendments of the Senate striking from the Treaty the 10th Article, and restored to grantees of land in Texas all the rights which they would have enjoyed under this article. These rumors were speedily dissipated by the publication of the President's Message and the accompanying documents. Still, it may be possible that the Mexican Government, urged thereto by Mr de la Rosa, will insist upon this outrageous construction of the Protocol. At all events, that Government should now be clearly and distinctly reminded of the character of this instrument under the Constitution of the United States, although upon this subject it is morally impossible they could have been mistaken. The notes of Mr de la Rosa to myself have rendered this necessary. As you were one of the chief actors on the occasion, and are consequently well acquainted with all the particulars, the President has deemed it proper to entrust you with the performance of this duty. Besides, this can be done more advantageously in Mexico than Washington, because it is almost certain from the circumstances that Mr de la Rosa has been acting without express instructions, and I fear under unhappy influences to which he is peculiarly exposed from his entire ignorance of the English language. Had he sought an interview with me upon the subject in the first instance, instead of adopting the course which he has pursued, it is probable I might have convinced him, that although the Protocol is of no validity considered as a new agreement between the parties, yet that the exposition of the three points which it embraces, is a fair and legitimate construction of the Treaty and ought to be entirely satisfactory to his Government.

Mr de la Rosa, in his note of the 24th ultimo, asserts that "this Protocol is a real Diplomatic Convention concluded between the Government of Mexico and that of the United States, and equally binding on both". And again: "In whatsoever light the Protocol may be considered, the Undersigned firmly believes that the Government of the United States cannot do less than recognise in it, a Diplomatic Convention, as obligatory as the Treaty of Peace signed at Guada-

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lupe." Now although the explanations contained in the Protocol present, in my opinion, the true exposition of the Treaty; yet if this were otherwise and they should contain any new stipulation, any change or modification whatever of any article in the Treaty, not in conformity with its letter and spirit, to this extent they are an absolute nullity.

Under forms of Government where the Sovereign or Chief Magistrate possesses exclusively the Treaty making power, he may by a Protocol or any other instrument agree with the other party to modify or change a Treaty in any manner he may think proper after it has received his ratification. But under such Governments as those of Mexico and the United States, where the approval of the Congress under the Constitution of the former and the advice and consent of the Senate under that of the latter are necessary to give validity to Treaties, no change can be made in any Treaty between such parties which has not previously received the constitutional sanction of these respective bodies. If this were not the case, diplomatic agents, on whom it would be impossible to confer any such legitimate authority, might, by means of a Protocol, usurp the powers of the American Senate and bind the Government of the United States in express violation of the Constitution. No case could be presented more striking than the present to illustrate the absurdity of such a pretension. Here is a Treaty which had been ratified by the President of the United States by and with the advice and consent of the Senate, and had been approved by the Mexican Congress; and yet the monstrous proposition is advanced, that the diplomatic agents of the two Governments, by an agreement in the form of a Protocol, possess the power to change, modify and annul the articles of this Treaty at pleasure. Had the Mexican Government attached any serious importance to the Protocol, their course was plain. The Congress of Mexico ought to have approved and the President ratified the Treaty with amendments. It would then have been returned to the President of the United States, who might, in his discretion, have submitted it to the Senate for their advice and consent, and if this had been given, he would again have ratified it in its amended form. But without any resort to these constitutional sources of power, it is now contended by Mr de la Rosa that this mere Protocol between the diplomatic agents of the two governments, which has never received the sanction of the Senate of the one or the Congress of the other,—which has never been and could not be published by either Government as a part of the Treaty, is "a Diplomatic Convention as obligatory as the Treaty of peace signed at Guadalupe".

It is impossible that the Mexican Government could have been ignorant of the provisions of the Constitution of the United States in regard to the Treaty making power. They had at different periods concluded Treaties with this Government. The very form of our ratification of the Treaty in question as well as of all these former Treaties, must have taught them that the President, without the advice and consent of the Senate, could enter into no valid Treaty stipulation whatever with a foreign Government. Much less were mere diplomatic agents, however exalted in rank, competent to exert this high power of binding the Government and people of the United States and declaring what should be the supreme law of the land. That the Mexican Government knew all this is demonstrated by my letter of the 18th March, 1848, to the Mexican Minister of Foreign Affairs. From this I extract the following quotation: "Your Excellency is doubtless aware that, under the Constitution of the United States, "the advice and consent of the Senate" is necessary to the validity of all Treaties, and that this must be given by a majority of two thirds of the Senators present. Every Treaty must receive the sanction of this august Executive Council, in the manner prescribed by the Constitution, before it can be binding on the United States."

And yet if rumor be correct, Mr de la Rosa, in the face of all this knowledge, will contend that the tenth article of the Treaty which he was informed in the letter just referred to had proved so obnoxious to the Government of the United States that the portion of it in regard to lands in Texas did not receive a single vote in the Senate, has been revived in this very particular by the paper called a Protocol, and is now to be held as sacred as if it had received every vote of the Senate. It is to be hoped that the Mexican Government will not adopt any such absurdity upon the suggestion of their Minister.

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When the Senate of the United States deem it proper to make amendments to a Treaty, it often becomes an indispensable, though a delicate duty for the Secretary of State, under the direction of the President, to afford to the Government of the other party explanations of these amendments. In preparing the letter of explanation to the Mexican Minister for Foreign Affairs, I used the utmost caution and care and resorted to the best sources of information. I am not aware that any portion of this letter has ever been criticised, much less condemned. The President considers that the explanations in the Protocol are in conformity both with the Treaty and this letter. In communicating with the Minister for Foreign Affairs upon the subject, I trust, therefore, that you may be able to convince him that the Protocol contains a correct exposition of the Treaty, and that the Treaty thus explained secures to Mexico all her legitimate rights, in the same manner and to the same extent as though the Protocol had been made a part of the Treaty, under the authority of the Mexican Congress and the Senate of the United States.

It would be lamentable indeed should this question, which does not appear to be of the least practical importance, produce unkind feelings between the two Republics at a moment when the future relations between them promise to be of the most auspicious character.

It seems inherently improbable that such an instruction as that last quoted would have been written by Buchanan without the knowledge and approval of his successor; the instruction was dated two days before the end of the presidential term; it was well known that John M. Clayton would become Secretary of State under President Taylor, and Buchanan had been in touch with Clayton regarding the date when the latter would take office (Polk's Diary, IV, 354, February 27, 1849; March 4, 1849, was Sunday; Buchanan retired on March 7; Clayton was commissioned on that day and began his service on March 8); and there is a statement that Clayton "had thoroughly examined the official correspondence which had been held between Mr. Buchanan and the Mexican Minister, and that he was prepared to indorse every line and sentence which his predecessor, Mr. Buchanan, had heretofore addressed to the latter personage touching this grave and interesting affair" (Foote, Casket of Reminiscences, 336).

However this may be, the position taken by the Taylor administration regarding the protocol was not wholly in accord with that of the Polk administration.

There were two distinct though clearly related questions: first, Was the protocol binding and obligatory? and secondly, Did the explanations of the protocol correctly construe the treaty?

The Polk administration answered the second of those questions in the affirmative and accordingly considered the first question of minor and only theoretical importance (see the relevant papers hereinbefore quoted and also Polk's Diary, IV, 323–24, February 6, 1849); but it was also insisted that if the explanations of the protocol did in any way modify the treaty, they were to be deemed of no force.

Clayton answered both questions flatly in the negative; as to the first, nothing could well be more explicit than the statements of his note to the Mexican Minister at Washington dated April 11, 1849 (quoted in part above); and as to the second he was equally clear in the instruction to Clifford of July 29, 1849 (quoted below).

The diplomatic and other correspondence now to be mentioned followed the two instructions of Buchanan to Clifford of February 17

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and March 2, 1849; the latter of these was the more important; neither was revoked by Clayton; on receipt of the former, Clifford reported thus (D.S., 13 Despatches, Mexico, No. 40, March 17, 1849):

In an interview with the Minister of Relations yesterday, when I was about to retire, he enquired if I had received any information in regard to the discussions in the U. States upon the subject of the Protocol. I repeated to him the substance of what is stated in Mr Buchanan's last despatch, that those discussions, for a brief period, made some impression upon the public mind, but that the publication of the President's message and the documents which accompanied it, had pretty effectually removed the misconceptions upon the subject. He replied to this that the Mexican Minister in Washington, Mr Rosa, had written him to the same effect, and that the matter had ceased to attract the attention of his Government.

When the more important instruction of March 2, 1849, was received (April 27), Clifford at once proceeded to carry out its directions; following a conversation with the Minister of Foreign Relations (Luis Gonzaga Cuevas), he addressed to the Minister on April 30 the following note, recounting the history of the protocol and giving his views (in harmony with those of the Polk administration) of the legal character and effect of that instrument (*ibid.*, No. 42, May 14, 1849, enclosure):

The Undersigned &c. &c. has the honor to inform His Excy. &c. &c. that he has just received a despatch from his Gov^t^ instructing him to invite the attention of His Excy. to a paper called the Protocol, which was signed at Querétaro on the 26th of May last by the Mexican Minister of Relations & the Commissioners of the U. States, and to explain & declare to the Mexican Gov^t^ the true character of the paper under the Constitution of the U. States. It is proper that His Excy. should also be informed that this step has become necessary in the opinion of the Gov^t^ of the U. States, in consequence of certain official notes addressed to the Secy. of State U.S. by the Mexican Minister resident in Washington. In compliance with this duty he begs leave, in the first place, to revert to the circumstances under which that paper was drawn up. The Commissioners of the U.S. arrived at Querétaro on the 25th of May 1848, and had the satisfaction of learning that, almost at the very moment of their arrival, the treaty had been ratified by the Senate of Mexico, and that nothing farther remained to be done than to exchange the ratifications. On the following day, their credentials were presented to the Pres^t^ of Mexico by the Undersigned, then one of the Comm^rs^, Mr Sevier being unable to attend at the interview in consequence of indisposition. In one of their notes to the Minister of Relations from this metropolis, the Commissioners had mentioned to him that they were authorized to give explanations of the changes which had been made in the treaty by the Senate of the U. S., and these explanations Mr de la Rosa requested from them soon after their reception by the President. Accordingly, at a conference on the evg. of the same day, at the house of the Minister, these explanations were furnished by Mr Clifford verbally, Mr Sevier continuing too unwell to leave his room. Besides the Minister of Relations, there were present at the conference Don Luis G. Cuevas & Don Bernardo Couto, two of the Mexican Comm^rs^ who had signed the treaty at Guadalupe Hidalgo. The same three gentlemen called at the residence of the Commissioners on the succeeding day, & Mr Sevier then made the same explanations, in strict accordance with those previously given by Mr Buchanan in his letter to the Mexican Minister of Foreign Affairs. It was then suggested by the Minister that it would be highly useful in the then existing state of public feeling at Querétaro, to put the explanations on paper. To this no objection was perceived by the Commissioners, they having already declared, in the most explicit terms, and it being well known & understood by the Mexican Gov^t^ that

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they were invested with no power to modify, change or alter, in the slightest degree, the treaty as amended by the Senate of the U.S. and that the memorandum of the conversations could no more have the effect to enlarge or restrict the amendments made by the Senate than the conversations themselves which it recorded. The explanations having been made by the Commrs in good faith & the sincerest conviction that they were in exact accordance with the provisions of the treaty as amended by the Senate, they did not hesitate to accede to the request, especially as they had perceived many reasons to justify it in the elements of discontent with which the Govt was surrounded, and believed it to be for the interest of both countries to strengthen its hands as far as possible against the impending revolution with which it was threatened. The explanations were accordingly reduced to writing in Spanish by Don Bernardo Couto, and a translation of his draft was made into English; and the document thus prepared was signed by the Minister of Relations & the Commrs, and immediately published in all the newspapers of Mexico. It could never have entered into the minds of the Commrs that the Minister was so slightly acquainted with the Constitution of the U.S. as to suppose that they could bind their Govt as to the stipulations of a treaty without the fullest sanction of the Senate, even if they had not expressly informed him that such was not the fact; and the Undersigned does not doubt that His Excy., Mr Cuevas, was fully impressed at the time with that conviction, that he still entertains it, and that he will not hesitate to act upon it with the frankness and good faith by which he is distinguished.

Such being the history of the document, such the circumstances & views under which it was signed, it is certainly a matter of surprise that His Excy. Mr de la Rosa, now Minister of Mexico to the U.S., should have deemed it his duty to assert in the most formal manner, that "this Protocol is a real diplomatic convention concluded between the Govt of Mexico & that of the U.S., and equally binding on both". This assertion is the more astonishing considering that Mr. de la Rosa had before him at the time the Protocol was drawn up, the letter of Mr Buchanan of the 18th of March 1848, to the Mexican Minister of F. Affairs, from which the Undersigned begs leave to make the following quotation: "Your Excy. is doubtless aware that, under the Constitution of the U.S., the advice & consent of the Senate is necessary to the validity of all treaties, and that this must be given by a majority of two thirds of the members present. Every treaty must receive the sanction of this august Executive Council in the manner prescribed by the Constitution before it can be binding on the U States." The assertion of Mr de la Rosa cannot for an instant be entertained; and the Undersigned, in carrying out his instructions, must be permitted to declare to His Excy. that, while the Govt of the U.S. considers the protocol a true exposition of the treaty & of the amendments made to it by the Senate, it, at the same time, regards it as of no force or efficacy whatever to enlarge or restrict any one of the provisions of the treaty. The treaty as amended must be construed by the appropriate tribunals of the U.S. entirely independent of the explanations of the Commissioners; and were it possible so to interpret them that they should contain any new stipulation, change or modification of any art. of the treaty not in conformity with its letter & spirit, to this extent they are an absolute nullity. Under forms of Govt where the Sovereign or Chief Magistrate possesses exclusively the treaty making power, he may, perhaps, by a Protocol or other instrument, agree with the other party to modify or change a treaty in any manner he may think proper, after it has received his ratification. But under such Govts as those of Mexico & the U. States, where the approval of the Congress under the Constitution of the former, & the advice & consent of the Senate under that of the latter, are necessary to give validity to treaties, no change whatever can be made in any treaty between such parties which has not previously received the Constitutional sanction of the approving power. Such being the case, it follows as a necessary consequence, that the Protocol can never receive an interpretation either to enlarge or restrict the provisions of the treaty of Guadalupe Hidalgo as amended by the Senate of the U. States. It is matter of great satisfaction to the Undersigned in making this declaration in the name of his Govt, to know that in no event can any injustice result from it to Mexico, as both parties signed the explanations of the Commrs as a true exposition of the treaty as amended by the Senate of the U.S. But if it were otherwise, the Mexican Govt still would

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have no ground of complaint. The amended treaty was approved by both branches of the Mexican Congress several days before these explanations were signed, and of course entirely independent of every thing which they contain. Had the Mexican Govt attached any serious importance to the Protocol, their course was plain. The Congress of Mexico ought to have approved & the Prest ought to have ratified the treaty with the explanations of the Commrs as amendments. It would then have been returned to the Prest U.S. who might in his discretion have submitted it to the Senate for their advice & consent, and if this had been given, he would again have ratified it in its amended form. Without any resort to these Constitutional sources of power, it is perfectly obvious that the protocol has no validity to enlarge or restrict any art. of the treaty, either under the Constitution of Mexico or that of the U. States. It is impossible that the Mexican Govt could have been ignorant of these well known truths. There was no want of information on the occasion in regard to the provision of the Constitution of the U.S. prescribing the manner of ratifying treaties. The Commrs referred to it and expounded it. The letter of Mr Buchanan before alluded to recites it in language clear as light. Mexico had at different periods concluded treaties with the Govt of the U.S., always under the same Constitution. The form of the ratification of the treaty in question, as well as of all the former treaties, must have taught her Govt. that the President U.S., without the advice & consent of the Senate, could enter into no valid treaty stipulation whatever with a foreign power. Surely, if it be admitted that the Prest could not exercise this high power of binding the people of the U.S. without the advice & consent of the Senate, it requires no argument to show that the Commrs, acting under his directions, were equally destitute of any such authority.

In conclusion, the Undersigned begs leave to reiterate his opinion that the explanations of the Commrs are a correct & truthful exposition of the treaty as amended by the Senate of the U. States. It is not known that any one has seriously attempted to prove the contrary, and it is believed that no such attempt, if made, will ever be successful. There being no difference of opinion on this point between the Govt of the U.S. & that of Mexico, it would be lamentable indeed should this question, which does not appear to possess the least practical importance, produce unkind feelings between the two Republics at a moment when their future relations promise to be of the most auspicious character.

There then occurred a change in the Ministry of Foreign Relations; upon the resignation of Cuevas (May 1), José María de Lacunza was named as his successor; with him Clifford conferred on May 11 and was informed that the answer to the note of Clifford of April 30 would follow the views expressed in the message of President Polk of the previous February 8 (cited and summarized above); but that answer was postponed, as Lacunza wished to have before him copies of the exchanges had at Washington; Clifford reported fully in his despatch of May 14, 1849, as follows (D.S., 13 Despatches, Mexico, No. 42; the two notes from Lacunza to Clifford therein referred to and enclosed are not here printed):

I have the honor to acknowledge the receipt of the despatch of Mr Buchanan, No 15 [of March 2, 1849], instructing me to make certain explanations to the Mexican Govt in regard to the paper called the Protocol, which was signed at Querétaro on the 26th of May 1848 by the Mexican Minister of Relations & the Commissioners of the U. States. The package containing it was postmarked at Vera Cruz on the 23d ult° and reached me in the regular course of the Mexican mail from that place. On the day of its receipt, the 27th ult°, I called upon the Minister of Relations and had a pretty full conversation with him upon the subject to which it relates. This interview was deemed advisable in the first instance, before addressing him officially, lest by possibility his opinions had undergone some change in consequence of events that had occurred in the U. States, which it was known had been very fully communicated to him by the Mexican Minister resident in Washington. In the course of the conference I

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made known to him that I had received the despatch, and explained to him without reserve the nature of the duty which it instructed me to perform. It was especially my object to impress upon his mind the true character of the paper under the Constitution of the U. States, which seems to be the main purpose of the instruction. In order to test his opinion fully, I presented the question in the various forms in which I afterwards treated it in my official note. To all this he replied that, it being admitted that the explanations of the Commissioners are a correct exposition of the treaty as amended by the Senate, the whole discussion was a mere war of words, utterly destitute of any practical importance either to Mexico or the U. States. It was not even suggested by him, nor has it ever been pretended by the Mexican Govt, so far as I know, that the Protocol is susceptible of a construction to enlarge or restrict any of the provisions of the treaty as amended by our Senate, much less that it has any validity to effect any such unconstitutional purpose, even supposing that its language and intent could be thus perverted. On the contrary, he received the explanations without the least manifestation of surprise, and promptly assured me that the subject involved no difficulty whatever. This was no more than I had a right to expect from Mr Cuevas, who was present when the paper was drawn up and doubtless well recollects that explanations similar in principle were made at the time by the Commissioners of the U. States. Considering his high character & intimate acquaintance with all the circumstances, I did not doubt for a moment when approaching him, that he would meet the question in a manner worthy of himself and of the high place which he then filled. It was then arranged between us that my note should be presented to him on the following Monday at one o'clock in the afternoon, and that his note in reply would be so framed as to supersede all necessity on my part to rejoin. This conference took place on the 27th ulto, as before remarked. On the morning of the 30th I received a message from Mr Cuevas informing me that unexpected engagements rendered it inconvenient for him to see me at the hour which had been assigned for our meeting, and expressing a wish that it might be defered to a future occasion. Knowing that serious dissensions had for some time existed in the Cabinet, and being desirous of fulfilling my instructions without farther delay, I sent the note, which was already prepared, to the office of Relations, and caused it to be placed in the hands of Mr Cuevas, requesting the Secy. of Legation who bore it to inform him that I would call at such time as suited his convenience. On the following day I learned with much regret that the Minister had tendered his resignation to the President; and in a few days after, that it had been duly accepted. . . . Being desirous of transmitting a copy of the reply which the change in the Ministry had devolved upon Mr Lacunza to make to my note addressed to Mr Cuevas, I called upon him on the afternoon of the 11th inst. and invited his attention to the subject. My views in regard to the character & effect of the Protocol being already before him in my note, I did not think it necessary to repeat them. The minister, without any hesitation, informed me that, in his opinion, the paper could not be regarded as an addition to the treaty as amended by our Senate, and that in framing his note he should follow the views which had been taken of the question by the late Prest of the U. States in his message of the 8th of Feby. last to the House of Representatives, assuring me, at the same time, that he considered those views correct, and that they were entirely satisfactory to the Mexican Govt. When I commenced writing I had every reason to expect that the reply from Mr Lacunza would be received in season to enable me to forward it with this despatch. In that, however, I am disappointed, as you will perceive from the explanatory note which was received on yesterday. Copies of my note to Mr Cuevas & the last named note of Mr Lacunza are herewith enclosed. Should the Minister make good the assurances given at the conference, and which in effect are pretty clearly shadowed forth in his explanatory note, it may be assumed that every apprehension that any difficulty will grow out of this question, is at an end. It being a political rather than a legal question, it is safe to conclude that the Courts of the U. States will follow the construction adopted by the political dept of the Govt. This rule has been uniformly adopted by the Supreme Court in the interpretation of treaties, even in cases where the American construction differed widely from that of the other high contracting party. Where both the contracting parties are agreed, it would be an absurdity, as it seems to me, to suppose that any

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tribunal of our country, state or federal, would undertake to overrule their solemn determination. Should any of our courts adopt a theory so unsound & so directly at variance with the repeated decisions of the Supreme Court, it would be error cognizable by that court, where it could be immediately corrected. Such are my views of the question, which I submit for consideration to your better judgment. If Mr Lacunza has the moral courage to put on paper his own deliberate opinions, the discussion here will terminate with his response. How far he may feel embarrassed by the correspondence of Mr de la Rosa, it is impossible for me to foresee. The prevailing vice of public men in this country is the fear of responsibility. Whether the Minister will suffer himself to be influenced by this consideration or not, the future will show. Should he attempt to assail any of the positions assumed in my note, I hope to be able to fortify them & demonstrate their correctness. That truth & justice are on the side of the U. States I know, and I have yet to learn there is much to fear in a cause which has those powerful agents for its support.

Since writing the above, a second note from Mr Lacunza has come to hand, which I hasten to lay before you. It appears from this note that Mr de la Rosa has been instructed to close his correspondence & to forward all doctᵉ upon the subject to his Govᵗ. In my opinion, this step augurs nothing unfavorable to the satisfactory termination of the discussion.

The despatch of Clifford of May 14, 1849, from which the foregoing is excerpted, was received at the Department of State on May 31; no response to it by way of simple acknowledgment or otherwise was made; Clifford proceeded, doubtless believing, as he had every right and reason to do, that his course was approved at Washington; on July 13 he reported what he then supposed to be the conclusion of the discussion; copies of two notes, also of July 13, were sent with the despatch; one of these was the note from Lacunza answering that of the previous April 30 and the other was Clifford's reply; the relevant paragraphs of the despatch and the text of the two notes (the first of these in translation) follow (D.S., 13 Despatches, Mexico, No. 44, and enclosures):

[*Mr. Clifford to Mr. Clayton*]

I have the honor to inform you that the discussion here respecting the character and effect of the Protocol, is concluded, and herewith I enclose copies of the correspondence. The question has never attracted much attention in this country, nor has the settlement of it been attended with much difficulty. About the time the news reached this city of the debate which took place in the House of Representatives in February last, I received the message of the late President upon the subject and caused it to be published. It was generally pronounced satisfactory, and nothing has occurred since to change the impression which that document produced. The steadiness with which Mr Lacunza & his associates in the Cabinet have adhered to the purpose of settling the question in a satisfactory manner, during the unavoidable delay which has taken place since my first note was written, is worthy of all praise, and shows very clearly, I think, the deep and solemn conviction of Presᵗ Herrera & his Counsellors of the correctness of the positions which that note affirms. Notwithstanding the influence which has been brought to bear upon their minds to induce them to change that determination, it is due to them to say that they have never wavered and only asked for the delay in order to treat Mr Rosa with a proper respect and to avoid the appearance of a premature decision upon a partial view of the facts. Fortunately for the cause of truth & justice, the Mexican Minister in Washington is not the only person among his countrymen who knows the circumstances under which that paper was drawn up. Some of the most distinguished and upright men of Mexico were present on the occasion, and many who were not present have a full knowledge of the motives which led the Commissioners to consent to reduce their explana-

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tions to writing. All who have any knowledge on the subject, know that the views put forth by Mr Rosa are incorrect, and are ready to sustain the President & his Cabinet in overruling them. It is useless, however, to indulge in any reflections upon the subject, now that it is concluded. It is enough that truth stands vindicated and the epitaph of the question is written.

[*Mr. Lacunza to Mr. Clifford*]

[Translation]

The undersigned, etc., etc., has the honor to acknowledge to Mr. Clifford, etc., etc., receipt of the note which His Excellency did him the honor of addressing to him under date of April 30 last, in which, by order of the Washington Government, he expresses the opinion of the said Government concerning the value and binding force which the contents of the conferences held at Querétaro between Their Excellencies Mr. Clifford and the late Mr. Sevier and the Minister of Foreign Relations at that time of the Mexican Republic, His Excellency Mr. Rosa, might have.

The undersigned believes it unnecessary for him to enter into a discussion regarding the force of the said document, whether as a new treaty, or as an addition to the Treaty of Guadalupe, or as an amendment or alteration of the latter. The Government of the undersigned does not consider it necessary to maintain those conferences under such character, and, in accordance with the principles of constitutional law which have been laid down at length on the part of the United States of the North, principles which are similar in the Constitutions of the two countries, has no hesitation in agreeing that if it had been necessary to consider those explanations under such aspect, doubtless it would not yet have been completed.

But, although they ought not to be considered as additions to or modifications of the treaty, the undersigned believes that they ought to be considered, and the Mexican Government does consider them and is pleased to see that His Excellency the Minister of the United States also considers them, in the note to which I have the honor of replying, *as a correct and true explanation of the treaty.* As such, their original and essential merit, the merit of every good explanation, as it consisted and consists in not altering or modifying in any way the treaty itself, such as it was approved by the legislative bodies which the Constitution of both countries required. The clauses of which a protocol was drawn up formed, therefore, a clearer version of certain articles.

This view, which the former President held, was confirmed in the note to which this is a reply, and the Honorable Mr. Clayton, in his turn, confirms it when, in his note to His Excellency Mr. Rosa in which he impugns so vigorously and at such length the force of this protocol as a diplomatic convention different from the treaty, he affirms that the differences had not been set forth between the true sense of the latter and that of the protocol in question.

With regard to the force which, as such explanation, those clauses may have, the Mexican Government does not give them the force which they would have if they had been subjected to the formalities necessary for a treaty, as I have already had the honor of saying, nor the force which a series of judicial decisions pronounced in this sense would give them; but my Government does give them the force derived from the affirmation of the eminent persons who made them, persons fully qualified to know the truth and who had been officially commissioned to state it: one fact is certain regarding these clauses, namely, that the Governments of the United States and of Mexico, in signing and ratifying the treaty, understood that the sense thereof was the same as that of those clauses. To suppose that the idea of the Government of the United States was different would be to insult it, because it would be to suppose that it believed the contrary of what it then stated to Mexico, what the President of your Republic subsequently stated before its Chambers, and what Your Excellency is even now stating to this Government. As to the Mexican Government, it has ratified the treaty, giving it the sense which is on record in those explanations and which do not change but only clarify the sense of the clauses thereof.

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Hence there does not appear to be any well-defined point that is causing the discussion concerning this matter and is prolonging this correspondence, especially as in this case, as His Excellency Mr. Clifford assures us, there is nothing to dispute. The Mexican Government therefore believes that it should consider these discussions closed, in view of the certainty that both Governments are persuaded that the clauses of the protocol, without at all changing the treaty, constitute its true and correct explanation. If, therefore, Mr. Clifford should find himself, as the undersigned hopes, in agreement regarding the propriety of putting an end to this matter under the terms indicated, it will give real pleasure to the undersigned.

[*Mr. Clifford to Mr. Lacunza*]

The Undersigned &c. &c. acknowledges the receipt of the note of His Excy. &c. in reply to the one which he had the honor to address to His Excy's predecessor on the 30th of last April, in regard to the Protocol. It gives him great gratification to state that the note is, in all respects, satisfactory, and will have the effect to settle the question in a manner equally honorable to both countries. In order, however, to guard against the possibility of any misconstruction of the correspondence, he begs leave to recapitulate some of the most important positions in regard to which there is an entire coincidence of opinion and a perfect agreement on both sides.

1. That the Protocol is not an addition to the Treaty and cannot so be considered either under the Constitution of Mexico or that of the U. States.
2. That it possesses no validity whatever to change or modify the treaty or any one of its provisions.
3. That the Protocol is regarded as a correct interpretation of the treaty, although it can never receive a construction to enlarge or restrict the treaty or any one of its provisions.

These principles being perfectly understood and agreed upon, the Undersigned will close the discussion on his part, and assures His Excy. that he considers the matter concluded.

On July 29, the day that Clifford's report of July 13 was received at the Department of State, his note of that date was in part disapproved and disavowed, and Clifford was recalled by this instruction (D.S., 16 Instructions, Mexico, 138–39):

Your despatches Numbers 44 and 45 have this day been received. It has been seen with regret from your note to the Mexican Minister for Foreign Affairs of the 13th instant on the subject of the Protocol, that you have asserted and admitted that that instrument presents a correct interpretation of the Treaty of Guadalupe Hidalgo. This the President does not and can never acknowledge, and it is deemed avisable to lose no time in apprizing you thereof. His wish and determination is to deal with the Mexican Government in a spirit of perfect fairness and candor. He conceives that it would not comport with this if he were to allow that Government to remain undeceived upon this point. He accordingly directs that as soon as may be practicable after you shall have received this despatch, you will address a note to the Minister for Foreign Affairs, in which you will state that while the President entirely concurs in the doctrines set forth in the paragraphs numbered 1 and 2, in your note above referred to, he wholly dissents from that part of the paragraph numbered 3 in the same note which states 'That the Protocol is regarded as a correct interpretation of the Treaty'.

Considering also the importance of this matter and apprehending that if you were to remain accredited in your present character to the Mexican Government, that Government might have reason to distrust the decided nature of the President's objections to the principle admitted in the paragraph adverted to, he has deemed it advisable to recall you. A sealed letter to the President of the Mexican Republic announcing this event, is accordingly herewith transmitted, and also an open copy of the same, which last you will communicate to the Minister for

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Foreign Affairs with a note requesting him to appoint a day for you to present the original to the President. On taking leave of that functionary, you will address to him a few oral remarks expressive of the President's desire to maintain unimpared the existing pacific and friendly relations between the two countries. Prior to leaving the City of Mexico, you will present Mr Walsh to the Minister of Relations as Chargé d'Affaires *ad interim*, and will commit to his custody the archives of the Legation.

That instruction of July 29, 1849, resulted in two more diplomatic notes, of September 3 from Clifford to Lacunza and of September 4 from the latter to the former; these appear to be the latest exchanges on the subject between the two Governments; the texts thereof follow, the latter in translation (D.S., 13 Despatches, Mexico, No. 47, September 6, 1849, enclosures):

[*Mr. Clifford to Mr. Lacunza*]

The U. &c. has the honor to inform His Excy. &c. that he has received a despatch from the city of Washington communicating the information that a certain part of the third proposition in his note of the 13th July last has been disapproved by his Gov^t^, & that the President does not & never can acknowledge its correctness, & instructing him to address this note to His Excy. & say that "while the President entirely concurs in the doctrines set forth in the paragraphs numbered 1 & 2, he wholly dissents from that part of the paragraph N° 3 in the same note which states that the Protocol is regarded as a correct interpretation of the treaty." It is also the duty of the U. to inform His Excy. that the President apprehending that were the U. to remain accredited in his present character, the Mexican Gov^t^ might have reason to distrust the decided nature of the President's objection to the principle admitted in the paragraph adverted to, has deemed it advisable to recal him. Enclosed is an official copy of a sealed letter to the Pres^t^ of the Mexican Republic announcing that event. It only remains for the U. to request His Excy. to appoint a day when he may present letter to the President & take his leave of the Mexican Gov^t^.

[*Mr. Lacunza to Mr. Clifford*]

[Translation]

The undersigned, etc., etc., has the honor to acknowledge receipt of the note of the 3d instant from His Excellency Mr. Clifford. In replying to the advice that the Government of the United States of the North has disapproved a single clause in the third paragraph of His Excellency's note of July 13 last concerning the protocol, the undersigned can do no less than express his regret at the prospect of a renewal of this discussion, as well as his surprise at the point chosen by the President of the United States for his disapproval.

The question in its present form is all the more embarrassing because the undersigned finds it difficult to divine what the intention of the Washington Government may be that can be in conformity with the propriety which he does not doubt it will observe. As soon as this point shall have been clarified, the Government of Mexico will be ready to discuss the question with good faith and in a spirit of friendship and with the most ardent desire to terminate it, if it is not already terminated, satisfactorily and honorably for both countries.

After the statement was made that the protocol was held in view as a true and correct interpretation of the treaty when the latter was signed by both Governments, after President Polk has maintained that he had considered and still considered the protocol as such true explanation, and, finally, in view of its real and intrinsic meaning, which is entirely in conformity with the stipulations of the treaty and so much so that even if it had been included in the original text it would not have made any change in the articles thereof, it is not easy to understand what the intention of the Washington Cabinet may be in objecting

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to the clause in question, as we cannot attribute to it the purpose of implying that the statements made hitherto by the said Cabinet were not in accord with the truth.

Holding the view that the treaty is not changed by the protocol, that the latter does not add thereto or detract therefrom, Mexico continues to believe that it is a true interpretation of the treaty and that the courts, even though not bound by a real law or authentic interpretation, nevertheless, acting according to reason and all the rules of interpretation acknowledged by philosophy and international law, in interpreting the treaty rightly cannot interpret it otherwise than in conformity with the protocol.

It was in this sense and with this understanding that the question was considered and settled in the previous correspondence, and the undersigned still hopes that the Washington Cabinet will be satisfied with this explanation and that the discussion will not be reopened. The words chosen by the President for his disapproval do not by themselves form a complete thought and must be considered together with those which precede and follow them. The undersigned, therefore, repeats that he cherishes the hope that, the matter being considered thus and being without any practical importance, it will still be settled in this sense, and he has the honor to renew, etc., etc.

The final comment of Clifford is in his despatch last cited, of September 6, 1849, wherefrom these passages are excerpted:

A few words of explanation in regard to the Protocol question & I have done. It is scarcely possible that any difficulty can arise in regard to it, considering the anxiety of the Mexican Govt to arrange it & its readiness to acquiesce in almost any mode of adjustment that will be satisfactory to the Govt of the U. States. Waiving all discussion at this time of the correspondence that has been communicated & my position in regard to it, I beg leave to repeat what in substance may be found in one of my previous despatches, that the question has never attracted much attention in this country, nor is it now regarded as one possessing much importance. It being conceded that the Protocol is not an addition to the treaty, that it possesses no validity whatever to change or modify any one of the stipulations between the two countries, & that the Courts of the U. States are not bound by the explanations which it contains beyond their intrinsic truth, it does not seem to me there is much left for dispute. Should it ever become necessary to discuss the treaty & ascertain its true meaning on the three points embraced in the Protocol, it will be found there is no substantial difference of opinion whatever between the Govt of Mexico as at present organized, & that of the U. States. All will agree, I suppose, that the treaty in stipulating for the protection & maintenance of property, gives full confirmation to complete legal titles to lands. In giving this protection to property the treaty does no more than affirm a principle often recognized by the Supreme Court, that the U States, as a just nation, would support such titles although there was no treaty stipulation to that effect. The protocol, in the sense in which the present Govt of Mexico understands it, does no more on this point than confirm complete legal titles, and it is all that is claimed by Mr Lacunza when he asserts that the protocol is a correct interpretation of the treaty. It has never been pretended by Mexico, nor does her Govt now claim that the Protocol gives any confirmation whatever to incomplete titles. If the impression is entertained that Mexico seeks to enlarge the treaty through the protocol so as to give any validity to impresario grants[1] in Texas or elsewhere, it is my duty to assure you it is a mistake. No such pretension has ever been set up by this Govt, and I am assured that it never will be. On one occasion I put the question distinctly to Mr Lacunza—does the Mexican Govt contend that the Protocol gives any confirmation to incomplete titles? To this he answered with much emphasis—"No, Sir".—The treaty provides that Mexicans who remain in the territories ceded shall be "secured in the free exercise of their religion without restriction." Mexico

[1] I.e., grants to *empresarios* or contractors; see *United States* v. *Ritchie*, 17 Howard, 525, at p. 539.

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contends for nothing more, nor has it ever been pretended by any one of her Cabinet officers that the Protocol is more comprehensive on this point than the provision of the treaty already cited. Should our Govt think it necessary to require a more specific disclaimer on these two points, no doubt is entertained that it may be had without the least difficulty or hesitation. The other point being one of no difficulty, I forbear to submit any remarks in regard to it.

As between the two Governments, the protocol seems to have had no later history and to have occasioned no further discussion; but Clayton put on record in detail his views of the protocol in the first instruction written to Robert P. Letcher, the successor of Clifford as Minister to Mexico; no directions were therein given for the taking of any steps in the matter; from that long instruction of September 18, 1849, these paragraphs regarding the protocol are excerpted (D.S., 16 Instructions, Mexico, 140–66):

You will find on the files of the Legation a copy of the correspondence between Mr de la Rosa, the Mexican Minister here, and Mr Buchanan, relative to the Protocol signed at Queretaro on the 30th of May, 1848, by the Commissioners of the United States and the Minister for Foreign Affairs of the Mexican Republic. Mr Buchanan, however, not having thought proper to reply to the note of Mr de la Rosa of the 24th of February, that duty devolved upon me, and was performed in my note of the 11th of April, last, a transcript of which you will herewith receive. You will notice that I did not undertake to point out the discrepancies between the Protocol and the Treaty as amended by the Senate, because, as Mr de la Rosa himself had not done this, I did not deem it to be called for by the occasion. Your predecessor, however, having entered into a correspondence upon the subject of the Protocol with the Mexican Minister for Foreign Affairs, resulting in conclusions, one of which, that the Proctocol is a correct construction of the Treaty, can never be assented to by the President, it is proper that you should be apprized of the grounds for this decision. I will, however, remark in the outset that, I do not presume to offer them as the reasons which actuated or influenced the Senate in adopting their amendments to the Treaty, or with any wish or expectation that they are to bias the judgments of the Courts in any cases under the Treaty which may be carried before them. They are to be considered as the views of the President only, and by them the proceedings of officers subject to his control touching the points involved, will be governed.

The first Amendment of the Senate respecting which the Protocol treats, is that relative to the Ninth Article of the Treaty.

The first paragraph of that Article is itself an amplification of the 3d Article of the Louisiana Treaty, and was evidently framed with an eye upon that Article. It however embraces several important stipulations not embraced therein, which if they had been ratified, might have prevented not only this government but the States to be formed out of the ceded territories, from repealing Mexican laws in force at the time of the cession, no matter how repugnant those laws might be to the views of those of the inhabitants who must soon become a large majority of the population. It is not improbable for instance, that those of the Mexican inhabitants who were interested in the system of peonage known to have prevailed in some if not all parts of the ceded territories, would have contended that the perpetuity of that system was intended to be guarantied by the paragraph in question. It is not to be wondered at that the Senate should have deemed it impolitic to sanction an article which might by any possibility admit of such a construction.

If, however, the first paragraph of the ninth article was thus objectionable, what must have been the sentiment respecting the two others?

The first article of the amendments to the Constitution of the United States declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof!

The Constitution also declares that all treaties made under the authority of the United States shall be the supreme law of the land.

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As it is notorious that in the ceded territories the Roman Catholic was the only religion the public exercise of which was tolerated by law, the paragraphs in question could have referred to that religion only. The inevitable consequence of sanctioning them, therefore, might not only have been a recognition of the privileges and immunities of that sect, but might have been considered tantamount to the enactment of a law respecting an establishment of religion in conflict with the spirit of the constitution. A step like this would justly have alarmed the friends of constitutional restriction upon legislative power and would have excited unappeasable jealousy and dissatisfaction among the members of other religious denominations throughout the United States, as well as in New Mexico and California. It is not surprising that the Senate deemed itself bound to avert the possibility of consequences like these. The ninth article was accordingly stricken out and another based mainly upon the 3d of the Louisiana Treaty substituted in its stead. While the latter is in perfect harmony with the constitution, it places the inhabitants of the ceded territories on the same footing in respect to their liberty, property and religion, officially recognizes no ecclesiastical authorities of any kind, and does not expressly guaranty any exclusive privileges which the Roman Catholics may have enjoyed in the ceded territories whilst they were under the dominion of Mexico. Its stipulations are comprehensive and just towards all sects. That this Article embraces all the stipulations contained in the original 9th Article is not true. It is certain that the Senate deemed it impolitic to pledge the faith of the nation to the specifications of that article. If, therefore, the substituted article shall hereafter be held not to embrace all or any one of those specifications, the Mexican government will have no reason to complain of perfidy on our part.

The next subject of the Protocol relates to the suppression of the Xth Article of the original Treaty.

The object and effect of this article was to revive those lavish grants of land by the Mexican government, not only in the State of Texas, but in the territories which had not been by law incorporated into the United States at the date of the Treaty. It is notorious that these grants, though embracing vast tracts of territory and imposing nominal burthens only on the grantees, were forfeited by them from failure to comply with their conditions. By the very terms upon which the State of Texas had been admitted into the Union, the article was entirely nugatory so far as it related to lands within her limits. To have consented to it, would have been a breach of faith on the part of this government towards her, which must have provoked her just resentment and might have led to resistance on her part to its execution, which there would not have been moral means at the command of this government successfully to oppose. I fully concur in the sentiment expressed by Mr Buchanan in his letter to the Mexican Minister for Foreign Affairs of the 18th of March 1848, that it is difficult to conjecture how an article of this character could have obtained a place in the Treaty. Seeing, then, that the stipulation with reference to Texas was from the beginning void from the incompetency of the United States, one of the contracting parties, to enter into it, what was its effect in regard to the other ceded territories not comprised within the limits of Texas? It is believed that the Mexican government was not less prodigal in donations of its domains in New Mexico and California than it had been in disposing of Texas lands, and that the terms of the grants had not been more faithfully complied with. There was also more than reason to suspect that enormous alienations of territory lying there had been made shortly prior to the breaking out of the war, in contemplation of it, and in anticipation of that result, which has proved the sagacity which the grantees imagined they evinced. Could it however reasonably be expected that this government, in addition to the treasure and blood expended in prosecuting the war, would engage to pay fifteen millions of dollars for lands the title to the most valuable part of which had been extinguished in this manner? The Senate, in my opinion most wisely, negatived this question also.

But what is the language of the Protocol upon the subject. "The American Government by suppressing the Xth Article of the Treaty of Guadalupe did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the Treaty, preserve the legal value which they may possess and the grantees may cause the legitimate titles to be acknowledged before the American Tribunals.

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Conformably to the law of the United States, legitimate titles to every description of property, personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican law in California and New Mexico up to the 13th of May 1846, and in Texas up to the 2° March 1836".

It may be true that by expunging the 10th article this Government did not intend to annul the grants of land in the ceded territories; but they certainly did not thereby mean to confirm them. Nor did they purpose declaring a judicial opinion on the subject. They were actuated by motives of policy only. That policy had been marked out for them by the law providing for the admission of Texas, and they were bound by every consideration of duty and expediency not to depart from it. They acknowledged the force of the obligation, and obeyed its behests. The same considerations of policy governed them with respect to the other grants. The signers of the Protocol, however, did not scruple to go further than even the President and Senate of the United States had deemed themselves warranted in going. That instrument not only presumes to expound the motives by which the President and Senate were actuated, but also undertakes to express a legal opinion upon the validity, under the amended Treaty, of the Mexican grants in the ceded territories. The President and Senate deemed it incompatible with the public interest to pledge the faith of the nation to allow the grantees to comply with those conditions which they had not fulfilled in consequence of their inability or neglect, or the performance of which had been interrupted by war. The effect of the Protocol might be to overrule this policy and to infuse new life into certain classes, at least, of the grants. To say that an instrument leading to consequences like these, afforded a faithful interpretation of the amended Treaty, is obviously erroneous.

The Protocol is as far from being a correct construction of the twelfth as of any other article of the Treaty to which it refers. This article as it originally stood, provided for two modes of paying the twelve millions due to Mexico after the three millions payable at the exchange of the ratifications of the treaty, should have been paid. By the first method, the United States were to issue and transfer to the Mexican Government a six per cent stock for the whole amount, redeemable at the pleasure of this government at any time within two years. This would have enabled the Mexican administration for the time being to have commanded the whole money at once, perhaps at a considerable premium, which would have afforded it a temptation to disregard stipulations of the treaty to be executed by them and means for resisting an enforcement of those stipulations on our part. The Senate therefore deemed it inexpedient to sanction this method of payment and chose the second for which this article provides. By this, the twelve millions were to be paid at Mexico in Mexican coin in four annual instalments of three millions each with interest from the date of the exchange of the ratifications of the Treaty. The Article concludes with the following sentence, "Certificates, in proper form, for the said instalments respectively, in such sums as shall be desired by the Mexican government, and transferable by it, shall be delivered to the said government by that of the United States."

Now it is obvious that if this sentence had been retained, the certificates for which it provides, would have been tantamount to a United States six per cent stock for twelve millions of dollars, redeemable, not at the pleasure of this government after the lapse of two years, but three millions a year for four years. The objections to the first mode of payment consequently applied with almost equal force to the second, mode if the concluding sentence were retained. This must have been the cause of its being expunged. According to the article as it now stands, the instalments, with the accruing interest, are to be paid to the Mexican government, in Mexican coin at the City of Mexico. If the administration of President Herrera should be overthrown by one of those revolutions to which Mexico has heretofore been so liable, the government de facto at the date when any one of the instalments falls due, will now have a right to expect payment thereof. If the certificates had been issued, payment must have been made to the holders of them, and it is not at all probable that any of them would have remained in the hands of any administration in that country which had any cause to apprehend that it would be expelled from power by force. Certainly, therefore, the Protocol declared the reverse of the fact when it stated that this

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government 'did not intend to deprive the Mexican Republic of the free and unrestrained faculty of ceding, conveying or transferring at any time (as it may judge best) the sum of twelve millions of dollars'.

It is to be observed that Mr Buchanan in his letter to the Mexican Minister for Foreign Affairs of the 18th of March, 1848, does not expressly refer to this suppressed sentence of the twelfth Article. He merely quotes that part of the article which was adopted by the Senate. It is not surprising, therefore, that the Mexican Government should have expected from the Commissioners some conjectures at least as to the reasons for expunging that sentence. It is to be regretted that those offered by them were not more conformable to the facts. This regret is deepened when it is considered that the Commissioners had in their possession a power to negotiate a new Convention stipulating to change the mode of paying the twelve millions conformably to the wishes of the Mexican government as expressed in the omitted sentence. Under these circumstances, the President cannot concur in the opinion of my predecessor advanced in his note to Mr de la Rosa of the 15th of February, last, that, under the Treaty as it now stands, that government may, like any other creditor, assign, in anticipation of the period for its payment the debt due it by the United States.

The Senate deemed it impolitic to allow the debt to be assignable. They must have meant that it should be placed upon the same footing as a debt due from one individual to another upon a note of hand not negotiable or assignable. Among other causes, it is not unlikely they may have been influenced by an apprehension that citizens of the United States were creditors of the Mexican Government on accounts originating prior to the Treaty of Guadalupe but not intended to be adjusted by the Board of Commissioners under that Treaty, and that causes of complaint from other citizens against Mexican authorities might arise before the payments were completed. Even thus early after the exchange of the ratifications of the Treaty, the wisdom of this forecast has been shown, as will appear in the sequel. That Government must not suppose that the Government of the United States will fail to require that any just claims of this character will be allowed as an offset from the debt which it owes to Mexico. If that debt had been assignable, there is every reason to apprehend that it would not have been transferred to citizens of the United States who might have been creditors of Mexico.

The paper in question would with more propriety have been called a 'Protocol' if it had been an embodiment of the substance of conferences in contemplation of a new Treaty.

I am not aware of an instance in diplomatic history in which this name has been applied to the record of conferences immediately preceding the exchange of ratifications of a Treaty already concluded. It may be that in assigning this name to the paper, the Mexican Minister for Foreign Affairs intended to convey the idea that the execution of the instrument on the part of the Commissioners was expected by his Government as a condition precedent to their ratification of the amended Treaty. It must be confessed that the concluding paragraph of the Protocol strengthens this view. It is possible, also, that his government may not have been unmindful of a similar proceeding in its diplomatic transactions with the government of the United States. It is well known that the Mexican government having failed seasonably to ratify its Treaty of limits with the United States of the 12th of January, 1828, an additional article became necessary for the purpose of extending the time within which the ratifications were to be exchanged. This was accordingly concluded on the 5th of April 1831, and the ratifications of it and of the treaty itself were exchanged on the 5th of April 1832 [see Document 60 and the notes thereto]. The treaty, however, stipulated that the Commissioners and Surveyors of the parties should meet at Natchitoches within one year from the exchange of the ratifications, for the purpose of entering upon their duties in running and marking the line. The United States appointed those officers on their part and they would have been ready to meet the Mexican Commissioners and Surveyor at the time and place prescribed by the Convention. The Mexican Government, however, made no appointment of a Commissioner and Surveyor. The demarcation of the boundary was thus again delayed and a new Convention became necessary for the purpose of extending the time within which the Commissioners and Surveyors were to

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meet. Mr Butler, the Chargé d'Affaires of the United States at Mexico, was accordingly empowered and instructed to conclude such a Convention. He signed one on the 3d of April 1835 [Document 79] and brought it himself to Washington in June succeeding. It does not appear, however, to have been examined until the autumn of that year when he was on his way back to his post. Mr Forsyth, the Secretary of State, then called the attention of Mr Castillo, the Mexican Chargé d'Affaires here to the fact, that the Convention instead of stipulating for the *meeting* of the Commissioners and Surveyors as both Governments had intended, merely stipulated for their *appointment*. So far as this government, at least, was concerned, a stipulation of this character was not only variant from the instructions which were given to Mr Butler, but was entirely unnecessary, because, as has been remarked, the Commissioners and Surveyor on the part of the United States had already been appointed. Mr Castillo of course informed his government of the error, which seems to have occasioned it alarm, for Mr Gorostiza was at once despatched to the United States as Envoy Extraordinary for the purpose of concluding at Washington a Convention in the proper form. Meanwhile, however, the one concluded by Mr Butler had been submitted by the President to the Senate, and as the attention of that Body was not specially invited to its insufficiency, they advised its ratification without amendment. Mr Gorostiza, soon after his arrival, made an overture for a new Convention, which was declined. When the one which had been approved by the Senate was presented to the President, he ratified it and the ratifications were exchanged in this City on the 20th of April, 1836.

On the same day, however, but before the exchange was effected, a paper was drawn up and signed by Mr Forsyth and Mr Gorostiza on the part of their respective governments, stating, in substance, that the Convention the ratifications of which were to be exchanged was not clearly expressed, but that the intention of the governments of both countries was that it should have stipulated that their Commissioners and Surveyors were to meet within the time and at the place prescribed by the original Convention. This instrument was not only never submitted to the Senate, but so far as I am aware that Body was not privy to its execution, nor was it known to them or to any persons other than Executive officers of the two nations, until it was published several years afterwards by this government. And even then, having been communicated to Congress with a mass of other papers upon our relations with Mexico, it escaped the attention and animadversion of that body and the public which its illegal character deserved.

With the statements in the two paragraphs last quoted should be read the notes to Document 79.

There is, of course, no reference to the protocol of May 26, 1848, in the United States instrument of ratification, of earlier date (March 16, 1848); the protocol is not mentioned in the Mexican ratification, in the act of exchange of ratifications, or in the proclamation; it is not included in the separate official prints of the treaty published at the time or subsequently; it is not with the text in 9 Statutes at Large, 922–43; in various later treaty collections the English version of the protocol is printed (e.g., 18 *ibid.*, pt. 2, 492–503; Haswell, 681–94; Malloy, I, 1107–21). In Mexican treaty collections, the Spanish version of the protocol appears (e.g., Dublan y Lozano, Legislacion mexicana, V, 379–80; Tratados y convenciones concluidos y ratificados por la Republica Mexicana, 210–11); the latter volume contains the English version as well (*ibid.*, 227–28).

The signing of the protocol by the American Commissioners, Sevier and Clifford, was ill advised; that instrument was at least partly, if not wholly, beyond the scope of their authority; moreover, the act seems to have been quite unnecessary; there is no reason to

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suppose that the exchange of ratifications would not have taken place in due course without it; Sevier and Clifford had reported that the amendments proposed to the treaty had been published at Mexico City early in April but had roused no opposition and had attracted little attention;[1] and before the first of the conferences resulting in the protocol had taken place, both Houses of the Mexican Congress had approved the treaty with the amendments.

The protocol was not in any legal sense part of the Treaty of Guadalupe Hidalgo or obligatory as an international act; on this point the two Governments were in accord in the latest of the official exchanges on the subject (July 13 and September 3 and 4, 1849; quoted above). That the protocol did correctly interpret the treaty was maintained on the one part and denied on the other; the arguments for the latter view are very forcibly and convincingly stated in the instruction of Secretary of State Clayton of September 18, 1849 (quoted in part above). Articles 9 and 12 of the treaty were long since fully executed, without occasion having arisen for consideration of the statements of the protocol as to their meaning and effect; and insofar as it dealt with the deleted Article 10, the protocol, strictly speaking, did not, and did not purport to, interpret or construe a treaty text, for none existed for interpretation or construction; all that the protocol did in its item "Second" (particularly in the second paragraph thereof) was to record the opinion of the two American lawyers who signed it on the law of their country regarding titles to land in Texas and in California and New Mexico. One fundamental error of that opinion was its reference to Texas, an independent Republic since 1836, recognized as such by the United States in 1837, and one of the States of the American Union since 1845, as territory ceded to the United States by the Treaty of Guadalupe Hidalgo; and with that opinion of Sevier and Clifford there may profitably be compared the statements of the Supreme Court of the United States in relevant cases; among these are *McKinney* v. *Saviego*, 18 Howard, 235 (December term, 1855), wherein it was held, without mention of the protocol of May 26, 1848, that in Article 8 of the Treaty of Guadalupe Hidalgo the contracting parties "did not refer to any portion of the acknowledged limits of Texas"; *United States* v. *Yorba*, 1 Wallace, 412 (December term, 1863; Mr. Justice Nathan Clifford was then a member of the Court), sustaining a Mexican land grant in California dated June 15, 1846, without mention of the protocol in the opinion, although it is referred to in the argument for the United States; *Basse* v. *Brownsville*, 154 U.S., 610 (January 11, 1875), following *McKinney* v. *Saviego*, *supra*; *Botiller* v. *Dominguez*, 130 U.S., 238 (April 1, 1889), upholding the act of March 3, 1851,

[1] In the report of the Mexican Commissioners dated March 1, 1848, Articles 9 and 10 had not been treated as among those of special concern to Mexico; it was pointed out that Article 9 did not affect Mexican citizens; and it was said that no Mexican interest was involved in the land grants in Texas and that those made in California and New Mexico were of trifling importance (see Exposición, 243–44); that paper was printed in El monitor republicano, of Mexico City, on May 21, 1848.

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"to ascertain and settle the private Land Claims in the State of California" (9 Statutes at Large, 631–34), but not referring to the protocol; *Barker* v. *Harvey*, 181 U.S., 481 (May 13, 1901), again upholding the act of March 3, 1851, and quoting the second item of the protocol.

ARTICLE 2

The instructions to Trist and the project of a treaty furnished to him contemplated a suspension of hostilities after signature of a treaty of peace but not until the ratification thereof by the Government of Mexico; throughout the negotiations of the winter of 1847–48, Trist was, in general and to the extent that he deemed fit, following these instructions, although he was acting without authority, as all concerned knew.

Hostilities had in fact ceased; and for them to be resumed would have been fatal to the whole plan of signing a treaty for later acceptance at Washington; with that plan General Scott was in entire sympathy; but reenforcements were being sent to him, and his orders were not consistent with the plan of Trist to make peace; while a tacit suspension of movements of troops might continue for a time, some armistice agreement was an essential accompaniment of a signed treaty.

Moreover, to delay such an armistice until ratification by the Mexican Government of the signed treaty was not practicable; the situation made the armistice a condition precedent to ratification; the Congress of Mexico was not in session; certain elections were necessary; and this required the existence of civil government, at least to the extent possible in view of the military occupation. Trist wrote at some length on the subject in his despatch No. 26, of January 12, 1848 (printed in serial 509, pp. 278–80); the relevant passages of that despatch have been previously quoted.

The agreement of Article 2 of the treaty for a convention for "a provisional suspension of hostilities" to follow immediately the signature, was one which could be carried out, on the part of the United States, only by independent action of the general commanding; authority from Washington for such a step was wholly lacking; Trist laid the matter before Scott in a letter of January 28, 1848 (Trist Papers, 29 : 61244–46); in that letter Trist defended his own course and argued that the alternatives were the treaty on the one hand and the fall of the Mexican Government on the other; he pointed out that an armistice was essential and that the second article of the agreed terms (a copy whereof was enclosed) made provision therefor; and he asked of Scott, as a necessary condition precedent to the signing of the treaty, "a pledge of your word, that no more expeditions shall take place, for the further occupation of the country by our troops until, the Treaty having been received at Washington, new instructions from thence shall have reached you."

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There is no doubt of Scott's favorable attitude;[1] but he was not required to assume the responsibility of carrying out the provisions of Article 2, for there was delay; not until February 16, 1848, was notice given to General Scott by General Mora y Villamil of the appointment of himself and General Quijano as Commissioners to negotiate the armistice (War Department files, 1872, 4950 : 3; see Trist Papers, 30 : 61475); on February 18 orders were received which placed Major General William O. Butler in command of the American Army (see Hitchcock, *op. cit.*, 319–20); on the day following, General Mora y Villamil wrote to General Butler that his colleague, General Quijano, was expected to arrive at the capital that afternoon (War Department files, 1872, 4950 : 4); and General Butler named Generals Worth and Smith to arrange the armistice terms. The discussions opened on February 22; the Mexican proposals were extreme; Trist wrote on February 23 that they were "absurd" and had caused the negotiation "to be broken off" (Trist Papers, 30 : 61483, on the draft of articles sent by him to the Mexican Commissioners; see Smith, *op. cit.*, II, 242); the American Commissioners wrote formally to Generals Mora y Villamil and Quijano on February 23 that any discussion of those proposals was "utterly inadmissible" (War Department files, 1872, 4950 : 17); the Mexican project was withdrawn and the negotiations proceeded; on February 29 "rough copies" of the convention were signed; on March 2 there were "signed & exchanged the four fair copies [originals] two in English & two in Spanish each party taking one of each language, retaining the date [February 29] of the agreement" (journal of the American Commissioners; War Department files, 1872, 4950 : 6); by letter dated March 4, 1848, General Anaya, Minister of War, informed Generals Mora y Villamil and Quijano of the ratification of the armistice on that day by the Mexican General in Chief (Manuel María Lombardini), pursuant to direction of the Provisional President of Mexico (Peña y Peña), given after consideration in Cabinet, and enclosed the two originals for ratification by General Butler (original in War Department files, 1872, 4950 : 8; D.S., photostat); the latter acted on March 5; the armistice was promulgated in Orders No. 18, Headquarters Army of Mexico, March 6, 1849 (War Department files; D.S., photostat), and at Querétaro on March 9 (Dublan y Lozano, Legislacion Mexicana, V, 345–48); the text in English and Spanish, from the originals in the files of the War Department, follows (1872, 4950 : 1 and 2; D.S., photostats):

Military Convention for the provisional suspension of hostilities.

The undersigned met in the City of Mexico on the twenty ninth day of February 1848 for the purpose of complying with the 2nd Article of the treaty

Convenio militar para la Suspension provisional de las hostilidades.

Los infrascritos reunidos en la Ciudad de Mejico el dia veinte y nueve de Febrero de mil ochocientos cuarenta y ocho, con el objeto de cumplir con

[1] General Scott issued, on February 12, the orders against removal or destruction of arms, munitions of war, etc., which, by Article 4, were to be despatched "immediately upon the signature of this treaty" (see Exposición, 233).

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of peace which was signed at the town of Guadalupe Hidalgo on the 2nd inst., in which it is agreed as follows:

"Immediately upon the signature of this treaty a convention shall be entered into between a Commissioner or Commissioners appointed by the General in-Chief of the forces of the United States and such as may be appointed by the Mexican Government; to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be re-established, as regards the political, administrative and judicial branches, so far as this shall be permitted by the circumstances of Military occupation".

When having mutually exhibited and examined their respective full powers which were found full and satisfactory they agreed upon the following Articles.

el artº 2º del Tratado firmado en la Ciudad de Guadalupe de Hidalgo, el dia dos del presente mes, en el cual se estipuló lo q. sigue "Luego q se firme el presente tratado habrá un convenio entre el Comisionado ó Comisionados del Gobierno mejicano y el o los q nombre el General en Gefe de las fuerzas de los Estados Unidos para q cesen provisionalmente las hostilidades, y se restablezca en los lugares ocupados por las mismas fuerzas el orden Constitucional en lo politico, administrativo y judicial en cuanto lo permitan las circunstancias de Ocupacion militar" Despues de haber presentado y ecsaminado sus respectivos plenos poderes, y halladolos en regla han convenido en los articulos siguentes

ARTICLE 1st

There shall be an absolute and general suspension of Arms and hostilities throughout the whole republic of Mexico between the forces of the United States of America and those of the United Mexican States:—and consequently; immediately after the publication of this convention for the suspension of hostilities, in any place or district, no act of hostility of any kind shall be committed by the forces of either party;—and if any person or persons be guilty of any breach of this article, they shall be individually liable to be tried and condemned under the laws of War.

ARTICULO PRIMERO. Habrá una absoluta y general suspension de armas y hostilidades en toda la Republica Mejicana, entre las fuerzas de los Estados Unidos Mejicanos y las de los Estados Unidos de America, y en consecuencia en el acto de la publicacion de este convenio en cada lugar, ningun acto de hostilidad de cuales quiera clase q sea, se cometerá por las fuerzas de ambas partes: y si alguna persona ó personas se hicieren culpables de alguna infraccion de este Articulo, quedarán inmediatamente Sugetas á ser perseguidas y juzgadas pr las leyes de la guerra

ARTICLE 2nd

The troops of the United States shall not advance beyond the positions already occupied by them towards any part of the Mexican territory not now in their possession, nor extend in any manner the limits of their present occupation—nor shall the troops of the United Mexican States advance from the positions now occupied by them, but each party may move freely and peaceably as they find most convenient, within the limits of their occupation, neither passing through a territory occupied by the other.

ARTICULO SEGUNDO. Las tropas de los Estados Unidos de America no abanzarán mas lejos de las posiciones q ahora ocupan, á ninguna parte del territorio mejicano q no está actualmente en su posesion, ni estenderán la linea de su presente ocupacion en manera alguna. Tampoco las tropas de los Estados Unidos Mejicanos abanzarán de las posesiones q ahora ocupan: unas y otras tropas podrán moverse libre y pacificamente como lo crean mas oportuno dentro de las lineas q hoy ocupan, sin pasar por enmedio del pais ocupado por la otrá.

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ARTICLE 3rd

All persons of either nation not belonging to the Army, may travel without molestation wherever their business may call them, subject to the laws of the country—But all persons belonging to the Army travelling from the posts of one, towards those of the other, shall be accompanied by a flag of truce or a Safe Conduct

ARTº TERCERO Todas las personas de ambas Naciones q no pertenecen al Ejercito, podrán viajar en todas direcciones á donde los llame sus negocios, sin ser molestados, sugetandose á las leyes del pais: pero todas las personas q pertenezcan al Ejercito q viajen de un punto á otro ocupado por la otra parte lo haran con salvo conducto, ó bajo bandera de parlamento.

ARTICLE 4TH.

In the Federal District and in all States occupied by the American troops, the collection of all the contributions of war provided for by General Orders Nos 376. & 395. of the Commander in Chief of said forces, due or becoming due for the months of February and March, shall be suspended until the expiration of this convention; and upon the ratification by the Mexican Government of the treaty of Peace signed on the second instant, all such contributions for the months of February and March, and afterwards shall be entirely remitted. But the tax on Gaming houses, liquor shops, and places of public amusement shall continue to be collected as now, in each place occupied by the American troops, until the exchange of the ratification of the treaty; without prejudice to the rights of the municipal authorities to collect taxes as heretofore.

ARTº CUARTO En el Distrito federal y en todo los Estados ocupados pr las tropas Americanos, se suspendera la recaudacion de todas las Contribuciones de guerra impuestas pr las ordenes gl nº 395., 376. del General en Gefe de dhās. fuerzas, y q se deben ó debiesen por los meses de Febrero y de Marzo, hasta q espire este convenio; y cuando el Gobierno mejicano ratifique el tratado de paz firmado el dia dos del corrte, todas estas contribuciones pertenecientes á Febrero y Marzo y siguientes seran enteramente condonadas. Pero los derechos impuestos á las casas de juego, las de diversiones publicas, y las tiendas de licores, continuarán recaudándose como lo son ahora en todos los lugares Ocupados pr las tropas Americanas, hasta el cange de las ratificaciones del tratado de paz, sin perjuicio de q se cobren los derechos municipales.

ARTICLE 5TH.

With a view to the re-establishment of constitutional order as regards the political, administrative and judicial branches—it is agreed that in all the places occupied by the American forces, the citizens of the Mexican republic shall be free to exercise all their political rights in Electing and installing the general, State and municipal authorities which belong to the Territorial division fixed by the Mexican laws and Constitution.

The American authorities will respect the exercise of those rights, and consider those as duly elected, who are held as such by the Mexican Government and in like manner will be considered those civil appointments made by the Mexican general or State government.

ARTº QUINTO. Con la mira de restablecer el orden constitucional respecto de los ramos politico, administrativo, y judicial, se conviene: que en todos los lugares ocupados por las fuerzas Americanas, los Ciudadanos de la Republica mejicana serán libres pa ejercer sus derechos politicos, pa elegir é instalar sus autoridades generales, las de los Estados y municipales, q corresponden segun la division territorial señalada por la Constitucion y leyes Mejicanas. El Ejercito Americano respetará el ejercicio de esos derechos y considerará precisamente como autoridades legitimas á las q se le dén á reconocer como tales por el Gobierno mejicano. De la misma manera se reconocerán y respetaran á las autoridades civiles de nombramto del Gobierno General ó de los Estados.

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ARTICLE 6TH.

Whenever an election is to be held in any town or place, occupied by the American troops: upon due notice thereof being given to the commanding officer, he shall march the whole of his force out of the limits of such town or place and there remain with them, until after the hour at which such elections should be concluded, leaving within the town or place only the force necessary for the security of his barracks, hospitals, stores and quarters.

And no person belonging to the American Army, shall by any means or on any consideration attempt to obstruct or interfere with any election: in order that they may be conducted according to the Mexican laws.

In Vera Cruz, the troops shall retire within the walls of the fortifications, and there remain until the elections are concluded.

ARTº SESTO. Siempre q hayan de hacerse elecciones en Alguna Ciudad ó lugar ocupado pr las tropas americanas, dando previamente noticia oficial al Comandte militar, este dispondrá la marcha de todas sus fuerzas fuera de los limites de la Ciudad y permanecerá asi con ellas hasta la hora señalada pa la conclusion de dhãs. elecciones; dejando solamente en la Ciudad ó lugar, las fuerzas necesarias para la seguridad de sus Cuarteles, almacenes, Hospitales y alojamitos; y ninga persona q pertenezca al Ejercito americano, de cual quiera manera ó pr ninguna consido atentará, interrumpirá ó intervendrá en estas elecciones; pa q se verifiquen segun las leyes mejicanas. En Veracruz las tropas se retirarán á las murallas y permanecerán en estas hasta la conclusion de las elecciones.

ARTICLE 7TH.

The Mexican authorities whether General, State or municipal shall have full liberty to establish and collect in the places occupied by the American troops all taxes and revenues in conformity with the laws of the country: to appoint all officers and agents necessary for the purpose, to dispose of such revenues as they may think fit, without any intervention on the part of the American troops: Excepting from this stipulation, all duties collected in the Custom houses, all internal duties on transit, and those collected on the precious metals in the places occupied.

But if the Mexican Government desire to re-establish the Tobacco monopoly, It shall give public notice of its intention, 60 days, to be counted from the date of this convention, in order that the holders of that article may have time to dispose of it. Nor shall any tax be laid upon any one belonging to the American Army nor on its necessary supplies.

ARTº SETIMO. Las autoridades mejicanas, sean generales, particulares de los Estados ó municipales, tendrán entera libertad para establecer y recaudar en los lugares ocupados pr las tropas americanas, todas las contribuciones y rentas de conformidad con las leyes del pais; nombrar todos los empleados y agentes necesarios con tal objeto; disponen de estas rentas como lo tubieren por conveniente, sin intervencion de ninga especie, por parte de las tropas Americanas esceptuandose de esta estipulacion lo relativo á aranceles, derechos de internacion ó sobre los metales preciosos en los lugares ocupados: ademas en estos, no se impondrá ninguna contribucion ó derecho á las provisiones necesarias pa las tropas, ó á los efectos q pertenenezcan al ejercito: y si en estos lugares ocupados, quisiese el Supremo Gobierno general mejicano, volver á estancar el tabaco, se darán á los tenedores de este fruto sesenta dias pa la venta contados desde la fecha de este Convenio.

ARTICLE 8TH.

In all places of the Mexican Republic the Revenue and administrations of the Post-office shall be re-established as they previously existed. All post houses, Post offices, public stages, horses, mules and other means of transportation shall receive the protection

ARTº OCTAVO. En todos los lugares de la Republica mejicana serán restablecidas como ecsistian anteriormente la renta de correos y sus administraciones, sus oficinas publicas, todas las Casas de postas, las Diligencias, Caballos, y recuas, como todo otro medio

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of the forces of both parties, and the whole shall be managed and conducted by the persons appointed in conformity with law, by the Mexican Government.

de transporte, y estos establecimientos han de ser protegidos por las fuerzas de ambas partes contratantes, y sus productos manejados pr las personas nombradas por el Gobierno grāl mejicano

ARTICLE 9TH.

Should there be any stock or deposite of Tobacco, Stamped paper or Playing cards, or other articles of commerce belonging to the Mexican Government or to that of any of the States, in any place occupied by the American troops, and of which they have not taken possession; such articles may be freely taken possession of by the Mexican Government and transported in such manner, and to such places as may suit its convenience.

ARTº NOVENO. Si hubiese algun deposito de tabaco, papel sellado, naipes ó algun otro efecto de comercio perteneciente al Gobierno grāl mejicano ó al de los Estados en cualquiera lugar ocupado pr las tropas de los Estados unidos del q ellas no hallan tomado posesion; el Gobierno grāl. mejicano ó el de los Estados podra tomar libre posesion de dhōs. efectos, y trasportarlos de la manera y á donde lo estime conveniente

ARTICLE 10TH.

Immediately after the publication of this convention all public offices not in the occupation of the American troops, and all Archives, Utensils and furniture of such offices shall be delivered up to civil officers of the General or State Governments; and as soon as other convenient places can be provided for the troops and officers now occupying them, all Convents of Nuns, Colleges for Education, Public Hospitals and other buildings for charitable purposes—shall be immediately vacated and delivered up.

ARTICULO DECIMO. Inmediatamente despues de la publicacion de este convenio, todas las oficinas publicas q no estan ocupadas por las tropas Americanas con todos los Archivos, utensilios y muebles de aquellas, serán entregadas á los empleados civiles del Gobierno general ó de los Estados; y tan pronto como les sean proporcionados otros locales convenientes, desocuparán los colegios, Conventos de monjas, hospitales y casas de beneficencia.

ARTICLE 11th

In all places occupied by the American troops—The Federal and State courts of justice and civil tribunals of every grade may enter freely and without any interruption, upon the exercise of their appropriate functions in conformity with the Mexican laws.

Nor will the American Military tribunals or civil tribunals created by their authority, take cognizance of or interfere in any cause or matter, unless a person belonging to the American Army be originally a party or the interest of the American Government or Army be concerned, in which cases, the jurisdiction shall remain in them; and the Mexican tribunals recognized and to be respected by the American Army, shall be those designated as legal by the proper authority of the Mexican General or State Governments respectively.

ARTº UNDECIMO. En todos los lugares ocupados pr las tropas Americanas los Trāles y Jueces de la Federacion sean del grado q fuesen podrán entrar libremente y sin interrupcion en el ejercicio de sus funciones naturales, de conformidad con las leyes mejicanas. Los Trales militares Americanos, ó los civiles, erigidos por su autoridad, no tomarán conocimiento ó intervendrán en ninguna causa ó negocio á menos q en el no esté interesada alguna persona perteneciente al Ejercito Americano, ó q sea parte en él originalmente ó que esté interesado el Gobierno ó el Ejercito americano, en cuyo caso la jurisdiccion será suya. Los Trales mejicanos q sean reconocidos y designados como legales por el Gobierno mejicano ó los Estados respectivamente, serán reconocidos y respetados por el Ejercito americano

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ARTICLE 12TH.

In the Federal District there may be organized and armed a force of 600 men of police or national guard to preserve order and maintain police—and in other places occupied by the American forces the Commanders thereof and the Mexican civil authorities shall agree upon the establishment of a convenient force for similar purposes.

ARTº DUODECIMO. En el Distrito federal se organizará y armará una fuerza de Seiscientos hombres de policia ó de guardia nacional pª conservar el orden, y para mantener la policia: en los demas lugares Ocupados pr las fuerzas Americanas, el Comandtº de ellas y la autoridad civil convendrán en el establecimtº de la fuerza necesaria con el mismo objeto.

ARTICLE 13TH.

In future as heretofore—in all the places occupied, Mexicans or Foreigners resident in Mexico, shall enjoy the protection of person and property guaranteed by the constitution and Laws of the Republic—and, as has heretofore been done, all supplies taken for the American Army shall be paid for at fair prices.

ARTº DECIMO TERCIO. En lo sucesivo en todos los puntos ocupados, los mejicanos y los estranjeros residentes en Mejico gozaran las garantias q para sus personas y bienes les conceden la constitucion y leyes de la Republica, y como se ha hecho hasta hoy, el Ejercito Americano pagará todo lo q necesite por sus justos precios

ARTICLE 14TH

The commanding officers of the American forces on the northern frontier of Mexico shall use all their influence to prevent the incursions of savages into the Mexican territory, and the robbery and ill treatment of the inhabitants—and the Mexican forces may assemble, oppose and pursue said Indians even within the lines occupied by the American troops, without being considered as infringing the provisions of this convention.

ARTICULO DECIMO CUARTO. Los Oficiales Comandtesª de las fuerzas americanas en las fronteras del Norte de Mejico usarán de toda su influencia pª prevenir las incursiones de los indios barbaros en el territorio mejicano, y el q roben y causen estorciones á los habitantes. Las fuerzas mejicanas podrán reunirse Oponerse y perseguir á estos indios, aun dentro de las lineas ocupadas pr las tropas americanas, sin q por ello se consideren infringidos los articulos de este convenio

ARTICLE 15TH

The American Army will continue to respect as hitherto, the temples and free exercise of the religion of the people of the Mexican Republic, in public and private—and church property shall be subject only to such laws as were in existence, or may be passed by the Mexican Government.

ARTº DECIMO QUINTO. El ejercito americano continuara respetando los templos y el libre ejercicio de la Religion del pueblo de la Republica mejicana asi en lo publico como en lo privado. Los bienes eclesiasticos quedarán Sugetos unicamente á las leyes q ecsistian, ó á las q se dieren pr las autoridades mejicanas.

ARTICLE 16TH

If any body of armed men be assembled in any part of the Mexican republic with a view of committing hostilities not authorized by either government; It shall be the duty of either or both of the contracting parties to oppose and disperse such body, without considering those who compose it, as having forfeited the protection of the laws of nations, un-

ARTICULO DECIMO SESTO. Si alguna reunion de hombres armados de cualquiera de las dos partes contratantes se juntase en algun lugar de la Republica mejicana, con la mira de cometer hostilidades q no estén autorizados por ninguno de los dos Gobiernos, será la obligacion de una ó de ambas partes contratantes oponerse y dispersar tal reunion, sin q las personas aprehen-

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less they have been guilty of robbery or murder.

The performance of this duty shall not be considered an infraction of this convention.

ARTICLE 17TH

This convention shall remain in force during the period fixed by the Treaty signed on the second instant at Guadalupe Hidalgo—or until one party shall give to the other, notice of its termination with the following additional delay, to wit: five days for all places within 60 leagues of the Capital, seven days for all places within 90 Leagues and twenty days for all other places.

The ratification of this convention shall be exchanged at Mexico within seven days from its signature.

In faith of which this convention has been signed in quadruplicate by the Commissioners the day month and Year first mentioned.

IGNACIO DE MORA Y VILLAMIL
BENITO QUIJANO
W. J WORTH *Bt Major General*
PERSIFOR F. SMITH *Bt Brig. General*

Ratificado por mi como Grâl. en gefe del Ejercito de operaciones en Queretaro, con previa autorizacion del Supremo Gobierno, y de conformidad con sus instrucciones. Queretaro Marzo cuatro de mil ochocientos cuarenta y ocho.[1]

MANUEL MARª LOMBARDINI

Ratified by me, at the city of Mexico, March 5, 1848.

W O BUTLER *Maj. Gen. Comg.*

didas puedan considerarse fuera de la proteccion del derecho de gentes escluyendose los Salteadores ó asesinos. La ejecucion de aquello no será considerada como una infraccion de este convenio

ARTº DECIMO SETIMO Este convenio concluirá en el termino señalado pª la aprobacion del tratado de paz firmado en la Ciudad de Guadª de Hidalgo el dos del Corriente ó cuando se tenga noticia oficial de alguna de las partes contratantes avisando á la otra con cinco dias de anticipacion para los lugares dentro del radio de sesenta leguas de esta Capital; con siete dias en un radio de noventa leguas, y veinte dias para los demas lugares. Las ratificaciones de este convenio serán cangeadas en Mejico dentro de siete dias de su fecha.

En fé de lo cual el presente convenio ha sido firmado por cuatriplicado por los Comisionados el dia mes y año citado.

W. J WORTH *Bt Major General*
PERSIFOR F. SMITH *Bt Brig General*
IGNACIO DE MORA Y VILLAMIL
BENITO QUIJANO

Ratificado por mi como Grâl. en gefe del Ejercito de operaciones en Queretaro, con previa autorización del Supremo Gobierno, y de conformidad con sus instrucciones. Queretaro Marzo cuatro de mil ochocientos cuarenta y ocho.

MANUEL MARª LOMBARDINI

Ratified by me, at the City of Mexico, March 5, 1848.

W O BUTLER *Maj. Gen. Comg.*

For cases in which the military convention of February 29, 1848, is mentioned or discussed, see Moore, International Arbitrations, IV, 3798–3808.

[1] Translation: Ratified by me as General in Chief of the Army of Operations in Querétaro with previous authorization of the Supreme Government and in conformity with its instructions. Querétaro, March fourth, one thousand eight hundred and forty-eight.

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Articles 3 and 4

Mexico City was evacuated by the forces of the United States on June 12, 1848. Clifford thus reported in his despatch of that date (D.S., 13 Despatches, Mexico, No. 13):

> At six o'clock this morning the flag of the U. States was taken down from the National Palace in this city, and that of the Mexican Republic was hoisted. The customary honors were paid to both, and the ceremony passed off in perfect quiet, although the great square was thronged. The last division of the army then evacuated the place, General Butler and Mr Sevier accompanying it.

Regarding the evacuation generally and the execution of the provisions of Articles 3 and 4 of the treaty, see Smith, *op. cit.*, II, 251–52, 475–76.

For claims arising from acts of mustered-out troops, see Moore, International Arbitrations, III, 3006–7.

Article 5

The boundary demarcation for which provision was made in Article 5 (penultimate paragraph) was not completed under the Treaty of Guadalupe Hidalgo; the Emory report on the boundary, dated July 29, 1856, gives the history of the proceedings had under both this treaty and the Gadsden Treaty of December 30, 1853 (Senate Executive Document No. 108, 34th Congress, 1st session, serial 832; hereinafter cited as "Emory Report"; printed also as House Executive Document No. 135, 34th Congress, 1st session, serial 861).

The appropriations for the execution of the demarcation clauses of the two treaties totaled $1,026,692; the relevant statutes are listed in the volume last cited at pages 21–22.

The boundary commission, as first constituted under Article 5, was composed of John B. Weller, Commissioner, and Andrew B. Gray, Surveyor, for the United States, and General Pedro García Condé,[1] Commissioner, and José Salazar Ilarregui, Surveyor, for Mexico; the earliest instructions to the American Commissioner from Secretary of State[2] Buchanan, dated January 24 and February 13, 1849, with other correspondence, mostly of the same year, are printed in Senate Executive Document No. 34, 31st Congress, 1st session, serial 558; that document is in two parts, separately paged.

The commission was organized at San Diego on July 6, 1849; the portion of the boundary first to be run consisted of a straight line from a point on the Pacific coast one marine league south of the southernmost point of the port of San Diego (indicated by the boundary drawn on the authenticated Plan of the Port of San Diego,

[1] General Condé died on December 19, 1851, and was succeeded by Salazar.

[2] In December 1849 the "business connected with the commission" was transferred to the Department of the Interior (D.S., 37 Domestic Letters, 374–75, 383).

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added to the treaty) to the junction of the Gila and Colorado Rivers, about 147 statute miles in length.[1]

The initial point[2] of the boundary was formally determined with some ceremony on October 10, 1849, "one marine league due south of the southernmost point of the port of San Diego" (see the journal of the commission for this period in Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 56–65, at p. 59); regarding the establishment of that "beginning point on the Pacific", Gray wrote on July 25, 1851, as follows (*ibid.*, 283):

> Finally, as precedents sometimes govern principles, I will here call your attention to the fact that, in ascertaining the beginning point on the Pacific, a doubt arose as to the exact southernmost point of the port. The treaty obliged us to go by "Don Juan Pantoja's map of 1782." The conformation of the coast now was entirely different from that laid down; still, a bluff point some distance north of the lower part of the port appeared the same on the map as upon the ground. From this point, representing the bluff, was measured, by the *scale of the map*, the distance to the most southern point as laid down on the plan. This distance was laid off on the ground, and its extremity taken for the southernmost point of the port, according to Don Juan Pantoja. It fell far beyond what would now be considered the "southernmost point;" yet, nevertheless, from this the marine league was run and the initial point established.

The "Topographical Sketch of the Southernmost Point of the Port of San Diego", projected and drawn by Andrew B. Gray, United States Surveyor, is in Senate Executive Document No. 34, 31st Congress, 1st session, serial 558.

On November 30, 1849, the terminal point of this portion of the line, at the confluence of the Gila and Colorado Rivers, was there fixed by the Surveyor on the part of Mexico and Lieutenant Amiel W.

[1] As given in the Emory Report (p. 66), the length of the azimuth boundary line between the monument at the initial point on the Pacific coast and the junction of the Gila and Colorado Rivers is 148.689 miles; the United States Coast and Geodetic Survey has (1936) recomputed the distance, on the North American 1927 datum, to be 146.994 miles.

[2] Regarding this initial point and the old monument thereat, see the Report of the Boundary Commission . . . 1891 to 1896, pt. 2, 173–74, 197–98; for reproductions of photographs of the monument, see the original monument No. I in *ibid.*, 173, and the recut, repaired monument, now No. 258, in *ibid.*, 198, and in the album of that report.

The position of the initial monument on the Pacific (some 600 feet easterly of the shore line) was originally determined, astronomically, to be in north latitude 32°31′59″.58 and in longitude 7 hours 48 minutes 21.1 seconds (i.e., 117° 05′16″.5) west of Greenwich (see the journal of the commission for this period in Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 59, 64); the inscription on the elaborate marble monument, made in New York and carried to San Diego in a naval vessel, was in the same terms (Report of the Boundary Commission . . . 1891 to 1896, pt. 2, 173–74). However, the position was recomputed to be in north latitude 32°31′59″.63 and in longitude 117°08′ 29″.7, which is about 3 miles farther west of the meridian of Greenwich, on the basis of observations of the moon received by Major Emory, on his arrival in New York, from Professor (later Sir) George Biddell Airy, Astronomer Royal at Greenwich (Emory Report, 242, and map No. 54 of the Boundary Commission).

The adjusted geographic position, on the North American 1927 datum, of this initial point, boundary monument No. 258, is fixed at 32°32′03″.817 north latitude and 117°07′18″.844 west longitude (letter of the Acting Director of the United States Coast and Geodetic Survey, April 13, 1936).

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Whipple, of the Topographical Engineers, Assistant Astronomer on the part of the United States (see the paper signed by them on that date in *ibid.*, pt. 1, pp. 37–38, and also the copy there printed of the signed sketch therein referred to). That decision was confirmed at the meeting of the commission held at San Diego on January 28, 1850 (Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 60–62). At that meeting it was—

> agreed that the geographical position of the precise point which is designated in the treaty as "the middle of the Gila, where it unites with the Colorado," is that of north latitude 32°43′32″, and 7 hours 38 minutes west of Greenwich meridian; that the geographical position of the point of land selected from which the azimuth of the line takes its departure, is 32°43′31″.58 north latitude. and in longitude 7 h. 38 min. 12 sec. 27 west of the meridian of Greenwich.[1]

The latitude and longitude of "the middle of the Gila where it unites with the Colorado" are given in the journal of the boundary commission, January 28, 1850 (quoted above), as 32°43′32″ north, 7 hours 38 minutes (i.e., 114°30′00″) west of Greenwich; the position as redetermined by the commission under the Gadsden Treaty and used in the computation of the azimuth and the distance from the initial point on the Pacific Ocean, was in latitude 32°43′32″.3 north, longitude 114°32′51″.61 west (Emory Report, 165); as recomputed after the receipt of observations of the moon from Professor Airy, Astronomer Royal at Greenwich, the position was in latitude 32°43′32″.3 north, longitude 114°36′09″.9 west (*ibid.*, 242). Assuming the identity of the location of the "Boundary Post, Yuma" of the 1891–96 boundary commission with that of the reference monument erected by Lieutenant Whipple in 1849, the position of the point at which the Gila joined the Colorado in 1849, as recomputed on the basis of the 1927 geodetic datum, is in latitude 32°43′32″.842 north, and longitude 114°36′40″.155 west (derived from data in a letter of the Acting Director, United States Coast and Geodetic Survey, May 22, 1936). It is to be remembered that the present (1936) junction of the Gila and Colorado Rivers is some miles east and slightly south of its location in 1849; see map No. 27000 of the Bureau of Reclamation, Department of the Interior, entitled "Yuma Irrigation Project Arizona-California".

The monument near the mouth of the Gila River has a varied history. Lieutenant Whipple in 1849 "erected a stone pier upon the first hill in the azimuth line of boundary from the mouth of the Rio

[1] There is a very curious, though unapparent, inconsistency in this quoted statement. The longitude given for the confluence point of the two rivers is 114°30′ west (7 hours 38 minutes west of Greenwich); that for the "point of land" is stated as 12.27 seconds of *time* farther west, or 114°33′04″.05; the difference is more than 3 minutes of longitude, or, say, 3 miles; but the actual distance between the two points was only 327 meters. The longitude of the mouth of the Gila, however, as determined by Lieutenant Whipple in October–November 1849, is stated by Major Emory to have been 7 hours 38 minutes 11.8 seconds, or 114°32′57″, west of Greenwich (Emory Report, 18); somewhat inconsistent is the statement (*ibid.*, 165) that Lieutenant Whipple's report of November 30, 1849, gave the longitude of the junction as 114°32′51″.61.

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Gila toward the Pacific Ocean"; at the meeting of Lieutenant Whipple and José Salazar Ilarregui on November 30, 1849, it was decided that this "stone pillar . . . should be considered a monument upon the boundary line" (D.S., United States–Mexico Boundary, Whipple Correspondence, Whipple to Emory, December 15, 1849). This monument was erected 327 meters "from the middle of the Gila where it unites with the Colorado", its position being later determined to be in latitude 32°43′31″.58 north, longitude 7 hours 38 minutes 12.27 seconds (i.e., 114°33′04″.05) west of Greenwich (Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 60, 64); consistent with this distance of 327 meters is the statement that the monument was 73.5 feet south and 1,070 feet west of the junction of the Gila with the Colorado (Emory Report, 165). The position of the monument is there stated, however, to be in latitude 32°43′31″.6 north, longitude 114°33′04″.3 west. The longitude of the monument subsequently set up, designated as "Monument No. VII" on map 45 of the boundary commission, 1855 (apparently corrected after the receipt of astronomic data from Professor Airy), is stated on that map to be 114°36′22″.20 west of Greenwich (see also Report of the Boundary Commission . . . 1891 to 1896, pt. 1, 47). That monument, made of thin plates of cast iron riveted together, originally placed near the mouth of the Gila, was removed after the Gadsden Treaty of 1853 went into force, and was transferred to the new line approximately twenty miles farther south, where it was erected as monument No. II east of the Colorado; it was later repaired and numbered monument No. 204 (*ibid.*, pt. 1, 45, and pt. 2, 174, 193).

The later boundary commission attempted, in 1893, to recover the position of the original monument erected by Lieutenant Whipple in 1849 to mark the mouth of the Gila in its course at that time, and succeeded, to the satisfaction of the commission; the report of the commission refers to that position as "Boundary Post, Yuma" and states, "If we admit that the post found in 1893 marks the point established in 1849, as all the testimony obtainable from the old residents of Yuma seems to prove . . ." (*ibid.*, pt. 1, 45). The probability that the position of the 1849 monument was recovered in 1893 is strongly corroborated by records of the General Land Office; original surveys in 1855 and 1874 reported the distance of the monument, or of its base, from nearby section corners then established; and resurveys in 1928–29 and 1932 tie in these section corners very accurately with other monuments erected by the first boundary commission in 1849–55.

The United States Coast and Geodetic Survey recomputed in 1936 the position of important monuments and bench marks in the vicinity of Yuma, reoccupied a number of triangulation points established by the boundary commission in 1893, and recomputed their latitude and longitude in terms of the 1927 geodetic datum; and then recomputed the position of the "Boundary Post, Yuma" of that commission. The geodetic position of the monument established in 1849 near the mouth of the Gila, recomputed on the 1927 datum (on the assumption of the correctness of the identification of its position by the boundary

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commission in 1893) is in latitude 32°43′32″.112 north, longitude 114°36′52″.685 west of Greenwich.[1]

Because of the peculiarly winding course of the Colorado, which left within the United States both banks of that river for some ten miles below the mouth of the Gila, the Mexican Commissioner on January 28, 1850, proposed a reference to the two Governments of the sovereignty over the region (nearly three square miles of land) between the straight line of the treaty and the left bank of the Colorado; the ground of this proposal was the offer[2] made by Trist on January 7, 1848, to give up part of the harbor of San Diego in return for a square league of land on the "western" (thought to be the right) bank of the Colorado, below the mouth of the Gila; the argument was that it was not consonant with the "spirit" of the negotiators, although following the wording of the treaty, that now a larger area on the *left* bank of the Colorado below the Gila should be within the United States; the American Commissioner thought, on the contrary, that the "unequivocal language of the treaty itself" was the only guide; he pointed out that the probable "intention" of the negotiators had been to leave all of Upper California to the United States and that it was "notorious" that the line between the two Californias ran "several miles south" of the line fixed as the boundary (see Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 60–62); the reference to the Governments was refused by the American Commissioner and was not made; Weller reported to Secretary of State Clayton as follows (Senate Executive Document No. 34, pt. 2, 31st Congress, 1st session, serial 558, p. 2, February 3, 1850):

> It is alleged on the part of Mexico, that our ministers, when negotiating the treaty under which we are now acting, endeavored to obtain a league of land on the right bank of the Colorado river, immediately below the mouth of the Gila. This proposition was doubtless based upon the supposition that the Colorado ran directly south to the Gulf of California. Such was the general impression. But it is found, upon actual survey, that, immediately after its junction with the Gila, it flows in a direction nearly northwest, thus making a straight line from the mouth of the Gila to the Pacific ocean, striking the Colorado some ten miles (by water) below the confluence of the two rivers. The effect of this, as you will perceive, is to throw some two leagues or more of land on the *left* bank of the Colorado, within the limits of the United States. This is understood to include the same territory which Mr. Trist sought to obtain, and for which certain concessions were offered upon the Pacific. The Mexican commissioner affirming that a strict adherence to the [letter] of the treaty would defeat the intention of the parties, desired to leave this question for the future settlement of our respective governments. To this, of course, I could not consent. A copy of that portion of the journal which relates to this subject is herewith enclosed, together with a map prepared by Mr. H. Clayton, the draughtsman of the commission.

A "Plan of the Junction of the Colorado and Gila Rivers", a copy of the signed sketch showing the boundary point agreed upon at that junction, and a "Map of a Survey . . . of the Mouth of the River Gila" are in the Senate document last cited; a reproduction of the map last mentioned, somewhat reduced, faces this page.

[1] This and the preceding three paragraphs were written by the Geographer of the Department of State, Mr. Samuel Whittemore Boggs.

[2] Quoted and discussed above under "The Boundary Proposals".

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Under date of February 20, 1850, Gray wrote in some detail to Thomas Ewing, Secretary of the Interior, regarding the work done and to be done on this part of the line; from that report these passages are excerpted (*ibid.*, 4–6):

> The surveys and measurements for defining upon the ground the southernmost point of this port, the marine league, and the initial point upon the Pacific, as referred to in the treaty, and also the survey for the settlement of the middle of the Rio Gila where it unites with the Colorado, I have completed. An entire reconnaissance and exploration, with distances determined and topography taken, I have also made of the country approximately to the line between the Pacific and the mouth of the Gila, being that portion of the boundary separating Upper from Lower California, (very nearly 130 miles[1] in a straight line). Plans of the two extremes of this line, with the topography and country in their vicinity, I have projected and drawn from my triangulations and surveys, both of which have been authenticated by the signing of the same by the commissioners and surveyors appointed under the treaty.
>
> The latitude and longitude of the initial point and the junction of the two rivers have been determined by the astronomical party instructed by the late Secretary of State to perform that duty. The azimuth of the line has been completed from these observations, and the course traced upon the ground at either end for a few miles, and some stakes thus far stuck in the ground; the country on the Pacific being open and destitute of trees, and at the Gila a growth of scattered cotton-wood or dwarf willow.

The commission adjourned on February 15, 1850, to meet at Paso del Norte (now Ciudad Juárez), Chihuahua, on the following November 4; the work then remaining to be done between the Pacific and the mouth of the Gila was the construction of the monuments and the location of certain of them (see the journal of the commission in Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 56–65); this work was finished in 1851 (see the despatch of Major William Hemsley Emory of September 25, 1851, in *ibid.*, 77–78; also the Emory Report, 1–10, 138–66).

For a study of the work done on this portion of the boundary, see Lesley, "The International Boundary Survey from San Diego to the Gila River, 1849–50", in California Historical Society Quarterly, IX, 3–15; see also Carreño, Mexico y los Estados Unidos de America, 286–88.

The portion of the boundary next to be dealt with was that which was described in the treaty as running from the Rio Grande westwardly along the whole southern boundary of New Mexico ("which runs north of the town called *Paso*"), thence northward along the western line of New Mexico to the Gila, and down the middle of that river to its junction with the Colorado; and it was specifically stated that the southern and western limits of New Mexico "are those laid down" in Disturnell's Map.

Owing to the inaccuracies of Disturnell's Map, controversy arose regarding the location of the line; the Commissioners, now John R. Bartlett for the United States and General Condé for Mexico, formally agreed on April 24, 1851, in fixing the initial point on the Rio Grande at the latitude given by Disturnell's Map for the intersection of that

[1] Perhaps this is a printing error for "150 miles" in the document cited.

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river with the southern boundary of New Mexico, namely, 32°22′ north (see Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 233–34, 387–88, 391–93, 406), and the running of the line westwardly was begun; the Secretary of the Interior (Alexander H. H. Stuart) approved that determination; but the Surveyor for the United States, Andrew B. Gray, and his successor, Major Emory, took the view that the initial point should be located on the Rio Grande according to the position of "Paso" (Ciudad Juárez) on the Disturnell Map, that is to say, according to the position thereon of the Chihuahua–New Mexico boundary relative to the true latitude of Paso; this would have put the initial point at about the parallel of 31°52′ (see *ibid.*, 118, 145–49, and the opinion of Lieutenant Whipple at p. 247; arguments pro and con are in *ibid.*, 277–86; see also the Emory Report, 16–20). As the parallel of 31°52′ is, say, thirty geographical miles south of the parallel first selected, the territorial difference involved was some 6,000 square miles.

The possibility of dispute regarding the location of the initial point on the Rio Grande had been early considered by the Mexican Government; under date of March 20, 1849, the Mexican Commissioner had been instructed that the line between New Mexico and Chihuahua should run according to the latitude of Disturnell's Map; and instructions more precise and detailed were written in response to the request of General Condé of June 15, 1850 (see the texts in Carreño, Mexico y los Estados Unidos de America, 289–94).

The Congress of the United States adopted the view of Gray and Emory (acts of July 21 and August 31, 1852; 10 Statutes at Large, 15–24, at p. 17, and 76–100, at pp. 94–95; an elaborate report of Gray, dated at Washington May 1853, is in Senate Executive Document No. 55, 33d Congress, 2d session, serial 752; the report of the Senate Committee on Foreign Relations on the subject, dated August 20, 1852, is therein included; Bartlett's "observations in defence of the establishment of the initial point on the Rio Grande", dated February 7, 1853, with five accompanying maps and other papers, are in Senate Executive Document No. 41, 32d Congress, 2d session, serial 665). The opinions put forward are shown graphically in Paullin, Atlas of the Historical Geography of the United States, plate 93H; and in that work (pp. 63–64) is an account of the question; a full and detailed history of the dispute, with many valuable citations, is in Rippy, The United States and Mexico, 106–25 (see also Garber, The Gadsden Treaty, 12–25); controversy ended with the Gadsden Treaty of December 30, 1853; by the cession of that treaty (Article 1) the line from the Rio Grande to the Colorado was shifted to the south, beginning on the Rio Grande at 31°47′ north latitude, terminating on the Colorado twenty miles below the junction of the Gila therewith, and running from that point up the middle of the Colorado to that junction.

The remainder of the boundary, according to the Treaty of Guadalupe Hidalgo, ran from a point opposite the mouth of the Rio Grande, "three leagues from land", up the middle of that river (by the deepest

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channel) to "the point where it strikes the southern boundary of New Mexico" (by Article 1 of the Gadsden Treaty of December 30, 1853, the terminal point was fixed at 31°47′ north latitude); as detailed in the Emory Report (pp. 53–92, 191–241), this portion of the boundary (from the terminal point last mentioned) was surveyed in 1852–53.

From 32° to 31°47′ north latitude the channel of the Rio Grande as it existed in 1850 became subsequently the boundary between New Mexico and Texas (see *New Mexico* v. *Texas*, 275 U.S., 279–303; 276 U.S., 557–60); the Salazar-Diaz survey of 1852, which covered the course of the Rio Grande through most of that area, is described in the earlier of the two opinions cited, at pages 295–300.

Owing to the controversy mentioned regarding the portion of the boundary running west from the Rio Grande and then north to the Gila, no "authoritative maps" contemplated by Article 5 of the Treaty of Guadalupe Hidalgo were signed until after the entry into force of the Gadsden Treaty (see the Emory Report, xiv, 38); the maps authenticated pursuant to the provisions of the two treaties are described in the notes to the Gadsden Treaty.

Articles 6 and 7

In Article 4 of the Gadsden Treaty of December 30, 1853, Articles 6 and 7 of the Treaty of Guadalupe Hidalgo are stated to be "abrogated and annulled"; but in respect of the Colorado River, that article of the Gadsden Treaty contains provisions quite similar to those of Article 6 of the Treaty of Guadalupe Hidalgo; and the stipulations of Article 7 of the latter treaty were continued in force as regards the Rio Grande (Rio Bravo del Norte) below 31°47′ north latitude.

Article 11

Article 11 of the Treaty of Guadalupe Hidalgo was expressly abrogated by Article 2 of the Gadsden Treaty of December 30, 1853 (see Moore, International Arbitrations, II, 1305–9; III, 2430–47). For an account of the Indian problem from 1848 to 1853, see Rippy, The United States and Mexico, 68–84, and Garber, The Gadsden Treaty, 25–40.

Article 12

The first payment of $3,000,000 to be made by the United States pursuant to Article 12 of the treaty was duly completed on June 30, 1848, and was thus reported by Clifford in his despatch of July 2 (D.S., 13 Despatches, Mexico, No. 15; by the act of March 3, 1847, 9 Statutes at Large, 174, the necessary sum had been appropriated):

> I have the honor to inform you that the arrangement made by Major General Butler under the advice of Col. Sevier and myself for the payment of the first instalment of three millions due to the Mexican Govt by the treaty of peace, was amicably completed by me on the thirtieth of June last. The receipt is executed in triplicate, one of which I have inclosed together with a translation of the same. Of the two remaining, one I have deposited in the archives of the

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Legation, and the other I shall bear with me to Washington when I return to the U. States. The manner in which the three millions have been produced will be seen by the following statement.

Memorandum

Amount received and paid over by Major General Butler on drafts transmitted to him from Washington from L. Davidson	$900. 000	
Amount paid by Major Stewart by order of Major General Butler being cash on hand belonging to the army	769. 650	
Amount allowed since the departure of Major General Butler for arms sold by him to the Mexican Government	87. 655. 90	
Contribution levied on the Federal District by Major Genl Scott and assumed by the Mexican Govt	49. 712. 28	
Twelve drafts negotiated by N. Clifford to L. S. Hargous amounting to	1. 151. 874. 16	
Premium allowed by said Hargous	41. 107. 66	
		$3. 000. 000. 00

The drafts negotiated to L. S. Hargous are numbered from one to twelve inclusive. Eleven are for the sum of one hundred thousand dollars and the twelfth for the sum of fifty one thousand eight hundred and seventy four dollars sixteen cents. The endorsements respectively bear date June 30, 1848, and are in the words following to wit—"Pay the within to L. S. Hargous or order on account of value received by the United States in payment of the first instalment of the treaty of peace to Mexico," and signed "Nathan Clifford Commissioner".

I also inclose the original receipt of L. S. Hargous for the drafts, reserving in the archives of the Legation a true copy. I also inclose the original guaranty of Major Genl Scott given to certain capitalists who advanced the military contribution levied by him—the same having been adjusted by the Mexican Govt, as will be seen by the discharge to the U. States on the back of the instrument executed by Messrs Ballange & Lasquetty. The original memorandum placed in my hands on the thirteenth of June last by Major Genl Butler I also transmit to you, from which it will be seen that the payment has been made in exact conformity to the arrangement before mentioned, but which he was unable to accomplish for want of time.

In consideration of the service which has been rendered me by L. S. Hargous in carrying into effect the arrangement, as well as of the liberal premium allowed by him on the drafts, I venture to request in his behalf that the drafts purchased by him may be paid in the city of New York instead of Washington city where they are made payable. It will be seen that the U. States make a clear saving in the sale of the drafts of forty one thousand one hundred and seven dollars and sixty six cents, after having applied to the payment all the funds belonging to the army in Mexico & the amount collected by Genl Butler on the drafts transmitted to him, leaving no specie to be transported to the coast.

The receipts given by me to Major Genl Butler will show still in my hands draft No thirteen, executed in three parts and dated June 11, 1848, for the sum of forty eight thousand one hundred and twenty five dollars and eighty four cents, drawn by Genl Butler in my favor on the Treasurer of the U. States of America. The last named draft I have this day canceled by erasing the name of "W. O. Butler Maj. Gen. USA" and by endorsing on each part of the same the following certificate under my name—"I hereby certify that having paid the first instalment of the treaty of peace to Mexico from other funds and having no occasion to use the within, I hereby cancel the same."

The draft in three parts thus canceled is herewith inclosed.

The papers enclosed by Clifford with the foregoing despatch were sent to the Treasury. In the treaty file is one of the triplicate originals of the receipt, marked as delivered "in person by Mr Clifford" on November 25, 1848. It reads as follows in translation:

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To all to whom these presents may come, be it known: That the undersigned, commissioned by the Government of the Mexican Republic with full powers to receive, in the name of the latter, the payment which will be spoken of below, and to issue a receipt to the Government of the United States of America for the said payment, hereby declare that we have received the first three million dollars which is to be paid by the same Government of the United States, in conformity with the stipulations of Article 12 of the Treaty of Peace, Friendship, Limits, and Settlement between the United States of America and the Mexican Republic signed in the city of Guadalupe Hidalgo on the second day of February last, the ratifications of which were duly exchanged in the city of Querétaro on the thirtieth day of May last: and we certify further that the three million dollars mentioned has been paid on this day into the General Treasury of the Mexican Republic by Mr. Nathan Clifford, Commissioner of the United States, in fulfilment of an arrangement made in part by Major General Butler and consummated by the said Mr. Clifford, and the said three million dollars has been received by us in the name of the Mexican Government and in complete performance of the agreement made in Article 12 of the said treaty, as payment of the said three million dollars.

Done and attested by our signatures and seals in triplicate this thirtieth day of June, one thousand eight hundred and forty-eight.

MANUEL MARIA CANSECO [Seal] P. F. DEL CASTILLO [Seal] IGN. DE LA BARRERA [Seal]

Approved:
M. RIVA PALACIO
Secretary of State and Treasury

The three officials who receipted were, in the order of signature, respectively, Chief Comptroller of the Court of Accounts, Minister of the General Treasury of the Nation, and Treasurer of the Custom-house of the Capital (see D.S., 13 Despatches, Mexico, No. 13, June 12, 1848, enclosure).

The remaining $12,000,000 was agreed to be paid at Mexico City "in the gold or silver coin of Mexico" in four annual instalments with interest at 6 percent. The respective amounts (including the interest) and the due dates were: $3,720,000, May 30, 1849; $3,540,000, May 30, 1850; $3,360,000, May 30, 1851; and $3,180,000, May 30, 1852. Appropriations were made for the 1849 and 1850 instalments by the act of February 26, 1849 (9 Statutes at Large, 348); for the 1851 instalment by the act of September 26, 1850 (*ibid.*, 473); and for the 1852 instalment by the act of February 10, 1852 (10 *ibid.*, 2).

Transfer problems of some magnitude and difficulty were involved. It was not found possible to make the payments in lump sums on the respective law days; some spreading of the financing was required; but the rate of exchange was generally in favor of the United States.

For the effecting of the 1849 payment, a contract was made by Robert J. Walker, Secretary of the Treasury, with Baring Brothers & Company, of London, which was duly performed (D.S., Miscellaneous Letters, July 1850, Thomas Corwin, Secretary of the Treasury, to Daniel Webster, Secretary of State, July 30, 1850, with copies of the letter of Walker to T. W. Ward of November 27, 1848, and the answer of Ward of December 1, 1848; and see *ibid.*, March–April 1849, William M. Meredith, Secretary of the Treasury, to John M. Clayton, Secretary of State, April 5, 1849, and *ibid.*, May–June 1849,

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T. W. Ward to the Secretary of the Treasury, June 30, 1849); the amount disbursed in United States funds was $3,552,600 (Senate Executive Document No. 2, 31st Congress, 1st session, serial 552, p. 26; House Executive Document No. 11, 31st Congress, 2d session, serial 597, p. 30).

The amount paid in United States funds in respect of the 1850 instalment is reported as $3,386,616.31 (*ibid.*). For the payment in Mexico City of a portion of the instalment, $2,000,000, the American Minister, Robert P. Letcher, made an agreement on February 13, 1850, with Lionel Davidson, the agent of the Rothschilds, of London and Paris, for the negotiation of drafts on New York at a premium of 3½ percent, interest at 6 percent on advance payments to be "bonified" (D.S., 14 Despatches, Mexico, No. 2, February 15, 1850, enclosure; the instructions to Letcher of December 8, 1849, and January 23, 1850, are in D.S., 16 Instructions, Mexico, 181–83, 186–87); receipts for the proceeds of the drafts were given at various dates from February 27 to June 5, 1850 (D.S., 14 Despatches, Mexico, No. 27, June 12, 1850). It appears that the remainder of the instalment due ($1,540,000) was disposed of by the Mexican Government some months in advance and that the bankers concerned (Yecker, Torre & Company) were reimbursed by a payment at New York of $1,461,227.95, which took into account discount at 3 percent and interest at ½ percent a month (D.S., 16 Instructions, Mexico, 186–87, January 23, 1850; see D.S., Miscellaneous Letters, November–December 1849, Howland & Aspinwall to the Secretary of State, December 5, 1849, and enclosures).

For making the instalment payments for 1851 and 1852, an arrangement was entered into in August 1850 with a group of banking houses, Baring Brothers & Company, Howland & Aspinwall, and Corcoran & Riggs (D.S., 16 Instructions, Mexico, 232, December 4, 1850). The agent for the Barings, Edmund J. Forstall, in December 1850 made advances to the Mexican Government on account of the 1851 instalment aggregating $650,000 (Senate Executive Document No. 31, 31st Congress, 2d session, serial 589); and there were further advances in January and February 1851 of $520,000 (D.S., 14 Despatches, Mexico, No. 45, February 16, 1851). A statement by the contractors showing the difficulties met in the carrying out of that arrangement in respect of the payment for 1851 is in their letter to the Secretary of State of January 14, 1852; payments to them from the United States Treasury ran from March 1 to June 27, 1851, averaging about May 15 (Senate Executive Document No. 18, 32d Congress, 1st session, serial 614). The amount paid by the Treasury was $3,242,400 (Senate Executive Document No. 11, 32d Congress, 1st session, serial 614, p. 22).

The payment from the Treasury for the 1852 instalment appears to have been the exact amount stipulated in the treaty, namely, $3,180,000 (House Executive Document No. 6, 32d Congress, 2d session, serial 675, pp. 290, 382). The appropriation for that final instalment was not made until February 10, 1852, less than four months prior to the due date of the payment in Mexico City.

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Accordingly, the arrangement with the bankers last mentioned became inapplicable, and a new contract was made with them by Secretary of State Webster (D.S., Miscellaneous Letters, February 1852, the bankers to the Secretary of State, February 4, 1852; D.S., 16 Instructions, Mexico, 311–12, February 24, 1852); the instruction last cited reads thus:

> I have to inform you, that a new contract for paying the instalment of indemnity due to Mexico on the 31st. of May next, pursuant to the Treaty of Guadalupe Hidalgo, has been entered into by Mr Webster on the part of the United States, and by Messrs Baring, Brothers & Co., Howland and Aspinwall and Corcoran and Riggs, as agents to make the payment. The contract contains a clause to the effect, that the funds which may be accumulated in Mexico by the agent of the contractors, previously to their payment to the government of that Republic, shall be under the protection of the United States, and shall be protected by them from loss in consequence of revolution or popular outbreak. Mr. E. J. Forstall is the agent of the contractors in Mexico. You will accordingly extend to the funds he may at any time have on hand for the purpose of making the payment any protection which he may desire and which may be requisite for carrying into full effect the stipulation on the part of this government above adverted to.

Letcher stated in his despatch No. 8 (D.S., 15 Despatches, Mexico, undated, received July 9, 1852) that the transaction had been closed; and on June 18 he reported as follows (*ibid.*, No. 10):

> Mr Forstall left here this morning for Vera Cruz, in company with a Government Escort, which has under it's charge the Two Millions and a half of the American Indemnity, paid to the Agent of the British Bondholders.
>
> The money was conveyed in forty waggons, each teamster being well armed.
>
> The escort is composed of a hundred and sixty Cavalry and Infantry, besides one piece of good artillery *well manned*.
>
> Mr Forstall was placed in connection with the Commanding officer, at my request.
>
> Every precaution has been taken, to secure the safe transportation of the money, in any and every contingency that may arise, and I hope it will arrive safely at Vera Cruz.
>
> Although the United States is *now* free, as I conceive, from all responsibility connected with the affair, still, as the British Minister,[1] and the Agent of the Bondholders, and also Mr Forstall, all seemed to manifest a strong wish that the American protection should continue, until the money arrived at Vera Cruz, I consented, as an act of commity not to withdraw it; but at the same time, declared in a most explicit manner, that the United States incurred no risk whatever, in the transmission of the amount, and such is the understanding of all the parties.

Article 13

The claims against Mexico which the United States, by Article 13, agreed to pay, had been adjudicated in the sum of $2,026,139.68 under the convention of April 11, 1839 (Document 89); the notes to that convention and the authorities there cited should be consulted; pursuant to the convention of January 30, 1843 (Document 100), three of twenty instalment payments of the principal of those claims, and certain interest, had been paid by the Government of Mexico; two instalments, the fourth and fifth, had been taken up by the United States Treasury pursuant to the act of August 10, 1846 (9 Statutes

[1] Percy William Doyle.

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at Large, 85, 94; for further details see the notes to Document 100); by the act of July 29, 1848 (9 Statutes at Large, 265), appropriation was made for the payment of the obligation of the United States in respect of the balance due upon those adjudicated claims; under that statute the amount paid, including interest, was $2,090,253.19 (Smith, *op. cit.*, II, 469).

ARTICLES 14 AND 15

By Articles 14 and 15, Mexico was exonerated from all unadjudicated claims of citizens of the United States arising prior to February 2, 1848; and the United States, to the extent of $3,250,000, agreed to pay such claims; the convention signed at Mexico City on November 20, 1843, had included provisions for the adjudications of certain claims of American citizens, but that convention failed to go into force (see the notes to Document 100); Articles 1 and 5 thereof, made principles and rules of decision by Article 15 of the present treaty, read as follows (D.S., Unperfected H2):

ARTICLE 1st

All claims of citizens of the Mexican Republic against the government of the United States, which shall be presented in the manner and time hereinafter expressed, and all claims of citizens of the United States against the government of the Mexican Republic, which for whatever cause were not submitted to, nor considered, nor finally decided by the commission, nor by the arbiter, appointed by the Convention [1] of 1839, and which shall be presented in the manner and time hereinafter specified, shall be referred to four commissioners, who shall form a Board, and shall be appointed in the following manner, that is to say: Two commissioners shall be appointed by the President of the Mexican Republic, and the other two by the President of the United States, with the approbation and consent of the Senate. The said commissioners thus appointed shall, in presence of each other, take an oath to examine and decide impartially the claims submitted to them, and which may lawfully be considered, according to the proofs, which shall be presented, the principles of right and justice, the Law of Nations, and the Treaties between the two Republics.

ARTICULO 1º

Todas las reclamaciones de Ciudadanos de la Republica Mexicana contra el Gobierno de los Estados Unidos, que se presentaren del modo y en el tiempo que en adelante se espresa; y todas las reclamaciones de Ciudadanos de los Estados Unidos contra el Gobierno de la República Mexicana, que por cualquier motivo no se presentáron á la Junta ó que no fueron examinadas ó decididas finalmente por ella ó por el arbitro establecido por la convencion[1] de 1839, y que se presentáren del modo y en el tiempo que en adelante se espresará se someterán á cuatro comisionados que formarán Junta, y serán nombrados del modo siguiente, á saber: Dos comisionados serán nombrados por el Presidente de la República Mexicana, y los otros dos lo serán por el Presidente de los Estados Unidos, con consentimiento y aprobacion del Senado de los mismos. Los dichos comisionados de en modo nombrados, prestarán juramento en presencia unos de otros, de examinar y decidir imparcialmente las reclamaciones que se les sometan, y que legalmente deban considerarse segun las pruebas que se les presentaren y segun los principios de derecho y justicia de la Ley de las Naciones y de los tratados entre ambas Republicas.

ARTICLE 5th

All claims of citizens of the United States against the Government of the

ARTICULO 5º

Todas las reclamaciones de Ciudadanos de los Estados Unidos contra el

[1] Document 89.

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Mexican Republic, which were considered by the commissioners, and referred to the umpire appointed under the convention of the 11th April 1839, and which were not decided by him, shall be referred to, and decided by, the umpire to be appointed, as provided by this Convention, on the points submitted to the umpire under the late Convention, and his decision shall be final and conclusive. It is also agreed, that if the respective commissioners shall deem it expedient, they may submit to the said arbiter new arguments upon the said claims.

Gobierno de la República Mexicana, que fueron examinadas por los comisionados y sometidas al Arbitro nombrado con arreglo á la Convencion de 11. de Abril de 1.839, y que no fueron por el decididas, se someterán y decidirán por el Arbitro que debe nombrarse conforme á esta Convencion por lo relativo á los puntos que se sujetaron al Arbitro establecido por la anterior convencion; y su decision será final y definitiva. A la vez se ha convenido que si se juzga oportuno por los Comisionados respectivos, podrán someterse por ellos al espresado Arbitro, nuevas espociciones sobre dichas reclamaciones

The act of March 3, 1849 (9 Statutes at Large, 393–94), provided for the execution of Articles 14 and 15 of the Treaty of Guadalupe Hidalgo; the whole subject is fully treated in Moore, International Arbitrations, II, 1248–86 (in that work, also, various claims presented are separately treated; for references to these, see *ibid.*, V, 5181–82).

Article 16

This article on the right of fortification was modeled on the antepenultimate paragraph of Article 3 of the Treaty of Paris of May 30, 1814 (British and Foreign State Papers, I, pt. 1, 158; see Exposición, 248).

Article 17

By Article 17, the Treaty of Amity, Commerce, and Navigation of April 5, 1831 (Document 70), was revived, with a clause excepting any stipulations thereof inconsistent with those of the present treaty; also excepted was the additional article of the treaty of 1831; that additional article, as written, had a term of only six years, ending on April 5, 1838; the revival of the treaty of 1831 was for eight years from the date of exchange of ratifications of the Treaty of Guadalupe Hidalgo, and thereafter indefinitely but subject to one year's notice of termination.

Article 33 of the treaty of 1831 was abrogated by Article 2 of the Gadsden Treaty of December 30, 1853; by note of November 30 (received December 4), 1880, the Government of Mexico gave notice of the termination of the treaty of 1831 "at the close of the 30th day of November in the coming year 1881" (see Foreign Relations, 1881, 820–21).

Articles 19 and 20

These articles had for their basis Article 9 of the project given to Trist with the instructions of April 15, 1847 (printed above); and in the instruction of June 14, 1847 (printed in part above), Trist was told that by the orders issued on June 11 to the Secretaries of War and of the Navy it had been "announced to the world that the

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Government intend to provide by the Treaty with Mexico, that goods imported into any of the ports of that country whilst in our military possession, shall be exempt from any new import duty or charge after the conclusion of peace" and that accordingly Article 9 of the project was to be considered as a *sine qua non*.

Trist explained the reasons for the detailed rules of Article 19 in his despatch of January 25, 1848, which has previously been quoted; and the comments of the Mexican Commissioners on the two articles are in Exposición, 248–49. Article 20, however, did not in fact have application, as more than sixty days necessarily elapsed between the date of signature of the treaty and the restoration of the custom-houses, which, by Article 3, did not take place until after the exchange of ratifications.

Cases arising from the importation of tobacco during the military occupation are treated in Moore, International Arbitrations, IV, 3806–13.

The Compensation of Trist

It appears that the pay of Trist was stopped on November 16, 1847, the day on which he received his recall; Trist left Mexico City on April 8, 1848, and reached Washington about the middle of the following June. Under date of August 7, 1848, he addressed to the Speaker of the House of Representatives a somewhat lengthy letter, highly critical of the administration, with extensive accompanying papers; these the House refused to print (Congressional Globe, XVII, 1057–58, August 10, 1848).

Under date of March 7, 1870, Trist petitioned for full compensation; a favorable report was made by the Senate Committee on Foreign Relations (Report No. 261, 41st Congress, 2d session, serial 1409, July 14, 1870); by that time Trist was seventy years old, as he was born at Charlottesville, Virginia, on June 2, 1800; by the act of April 20, 1871 (17 Statutes at Large, 643), there were appropriated for payment to Trist the sums of $13,762.40 as the balance due for salary, etc., and $797.50 for expenses incurred.

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VENEZUELA : APRIL 12, 1848

Convention for the Settlement of the Case of the Brig "Sarah Wilson", signed at Caracas April 12, 1848. Original in Spanish and English. Not subject to ratification by the United States. As to ratification by Venezuela, see the editorial notes. Not proclaimed.

Convencion Sobre el reclamo relativo al Bergantin Americano Sarah Wilson.

Los infraescritos, Rafael Acevedo, Secretario de Estado del Despacho de Relaciones Exteriores del Gobierno de Venezuela, y Benjamin G. Shields, Encargado de Negocios de los Estados Unidos de América, estando debidamente autorizados para celebrar un arreglo equitativo para la indemnizacion reclamada por los interesados en el Bergantin Norte Americano Sarah Wilson, que fué injustamente detenido y vendido con su cargamento por las autoridades de Venezuela en los años de 1829 y 1830, han convenido en dejar concluido y sellado de todo punto este asunto en los términos siguientes.

Convention upon the claim relative to the American Brig Sarah Wilson.

The undersigned, Benjamin G. Shields, Chargé d'Affaires of the United States of America, and Rafael Acevedo, Secretary of State of the Department of Foreign Relations of the Government of Venezuela, being duly authorized to form an equitable agreement for the indemnification claimed by those interested in the American Brig Sarah Wilson, which was unjustly detained and sold with her cargo by the authorities of Venezuela, in the years 1829 and 1830, have agreed to conclude and seal at all points this affair in the terms following.

ARTº 1º El Gobierno de Venezuela se obliga á pagar á la órden del Sor Encargado de Negocios de los Estados Unidos, previa la aprobacion del Congreso Venezolano, la cantidad de treinta mil

ART. 1st The Government of Venezuela obligates itself to pay to the order of the Chargé d'affaires of the United States, with the previous approbation of the Congress of Venezuela, the sum of

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doscientos pesos por indemnizacion absoluta de todas las pérdidas y perjuicios que han reclamado de Venezuela por conducto de la Legacion de su pais, los dueños é interesados en el Bergantin Sarah Wilson, los cuales no tendran derecho para intentar ninguna nueva reclamacion que tenga orijen en las circunstancias de este caso.

ARTº 2º Dicha suma de treinta mil doscientos pesos se pagará por Tesorería en dos porciones iguales el dia 31 de Agosto de mil ochocientos cuarenta y ocho y el dia 30 de Noviembre del mismo año.

ARTº 3º Esta Convencion será sometida al Congreso de Venezuela en sus presentes sesiones para que se sirva destinar la suma necesaria para su fiel ejecucion.

En fé de lo cual los infraescritos han firmado dos de un tenor en Caracas á doce de abril de mil ochocientos cuarenta y ocho.

El Secretario de R.E.
RAFAEL ACEVEDO
B. G. SHIELDS
Chargé d'affaires of the United States to the Republic of Venezuela

thirty thousand and two hundred dollars in absolute indemnification of all losses and damages which the owners and persons interested in the Brig Sarah Wilson, have claimed through the Legation of their country, who shall have no right to prefer any new claim that may have origin in the circumstances of this case.

ART. 2d Said sum of thirty thousand and two hundred dollars shall be paid at the Treasury in two equal portions on the 31st of August one thousand eight hundred and forty eight, and the 30th of November of the same year.

ART. 3d This Convention shall be submitted to Congress during its present sessions in order that it may appropriate the sum necessary for its faithful execution.

In witness whereof the undersigned have signed two of one tenor in Caracas on the twelfth day of April, one thousand eight hundred and forty eight.

B. G. SHIELDS
Chargé d'affaires of the United States to the Republic of Venezuela.

El Secretario de R.E.
RAFAEL ACEVEDO.

NOTES

The source of the text of this convention printed above is the copy, in Spanish and English, which accompanied the despatch of Benjamin

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G. Shields, Chargé d'Affaires to Venezuela, of April 18, 1848 (D.S., 5 Despatches, Venezuela, No. 57). In that copy the text of the convention is written in parallel columns, the Spanish version at the left.

While there is no mention in the convention of full powers, Shields had been given a full power under date of March 24, 1845, "to agree, treat, consult and negotiate of and concerning claims of citizens of the United States against the late Republic of Colombia and the said Republic of Venezuela" (D.S., 3 Credences, 122).

The Case of the "Sarah Wilson"

This convention settled the long-standing claim for the seizure by the authorities of Venezuela of the brig *Sarah Wilson* and her cargo at La Guaira in June 1829, a few months prior to the withdrawal of Venezuela from the former Republic of Colombia. In the note of Shields of September 9, 1847, to the Minister of Foreign Affairs of Venezuela, the facts of the case were set forth at great length; extracts from that note follow (D.S., 4 Despatches, Venezuela, No. 44, September 20, 1847, enclosure):

The owners of the Brig, Sarah Wilson, entered into a contract with the civil authorities of the Department of the Isthmus of Panama, to deliver there to the administration of the Tobacco Rents, a considerable quantity of Virginia Tobacco, of which one cargo had already been delivered at Chagres, and another embarqued aboard the Sarah Wilson, destined for the same purpose; when they received intelligence that the authorities at Panama were unable to make the payments stipulated by the contract; whereupon they resolved to change the destination of the vessel, instructing the Supercargo, Pierre Lafage, to make sale of the Cargo on board, at any other place, amongst the West India Islands, or on the Continent, where the laws might permit him to enter and deal in said article. In pursuance of these instructions, he made a voyage of some considerable duration, extending to the most distant of the windward islands, in which he disposed of something near half of the Cargo; and on his return, intending to take Chagres in his rout, he touched at Cumana on the Spanish main, to provide the vessel with water and other necessary stores. At this place he received information from the Prefect of that Department, Gen. Bermudez, that the authorities at La Guaira and Caracas needed and desired to obtain, a supply of the Class and quality of tobacco, which comprised his cargo, and was requested, and to this end furnished by him with a formal letter of introduction to the Prefect of Caracas, Gen. P. B. Mendez, to touch at the Port of La Guaira, and there offer to said authorities, a sale of his cargo. He accordingly made sail for said port—arrived there on or about the 20th June [1829], and forthwith reported his vessel with all her papers, and a full manifest of cargo, to the proper authorities. His propositions to sell the tobacco to the Government, with a sample of the article, and the letter of introduction from the Prefect of Cumana to the Prefect of Caracas, were all dispatched immediately, to the latter officer, by the "Administrador de Tabacco" in La Guaira, with the request that the vessel should remain at anchor in the Port, until the return of an answer from the proper authorities at Caracas.

At about the time, however, when the answer was expected, the vessel was boarded and taken possession of by some seven or eight armed men, by order of the authorities of the Port, at an expense to the parties, of three dollars per man, for every seven hours, whilst on board. This violent proceeding excited the suspicions of the Supercargo and Captain of the vessel, to a degree that caused them to pay the port dues for entrance and anchorage, and demand a clearance for the departure of the vessel, which when claimed, was denied them, upon the ground, that the vessel could not be permitted to depart until the receipt of an answer, or further orders, from the Prefect at Caracas. Thereupon the Super-

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cargo had recourse to the U. States Consul in that Port, I. G. Williamson Esq., and before him made a formal protest against the illegal action of the authorities, in withholding a clearance of the vessel, upon application therefor, before the expiration of the forty eight hours allowed by law, for the remaining of a vessel within port, without discharging any portion of her cargo, and for the compulsory means employed by said authorities to detain said vessel within port, beyond said period of time. The forty eight hours had scarcely elapsed, when an order was received from the Prefect at Caracas, to seize the vessel and Cargo, with a view to their confiscation for the personal benefit and reward, (according to the law) of those at whose instigation the seizure was made; in consequence of which, the guard, previously put aboard, was increased, the vessel and Cargo dispossessed of the lawful commander and supercargo, and the major part of her crew, by this extraordinary proceeding, caused to abandon their employment.

The supercargo immediately repaired to Caracas, to defend the interests committed to his charge, where he found legal proceedings already instituted against the vessel and Cargo by the Prefect, at the instance of the Administrator General of Tobacco. According to the legal course of proceeding, the subject was passed by the Prefect to the Assessor, Jose Duarte, for his consideration and dictamen, by whom it was committed to the Fiscal, for an examination and report upon the facts and law of the case. The report of this officer was in all respects favorable to the release of the vessel and cargo, and promptly confirmed by a succint, but most explicit and emphatic "dictamen" from the Assessor, in which it was alleged as proven, that there had been no introduction of tobacco, nor attempt to introduce it, from on board the Brig Sarah Wilson, but on the Contrary, a frank and open offer, in good faith, to sell the article to the Government, at the instigation of the Intendent of Cumana, whence the vessel had last sailed; from which the assessor concludes said dictamen with an order, that the vessel should be released, unless the Tobacco Administration should be in want of the article, in which event, it should be contracted for, in due form. In this decision the Prefect refused to concur, for reasons totally inapplicable to the facts of the case, as will be seen by reference to *his* dictamen of the same date, (8th July [1829]) in which the case is ordered to the Superior Court of the Treasury. [Some account of legal proceedings follows.]

. . . . . .

Pending these high-handed measures, and after the Supercargo and Captain had been divested of all control over vessel and Cargo—the latter having been deposited in the Government store houses, and the part perishable ordered to be sold, and the former kept, for a month and a half under guard, at a heavy daily expense, paid by said supercargo and captain, under compulsion by the authorities of the port—without means to defray further expenses, and utterly despondent of any just result from the despotism and avidity which swayed the action of the high powers of Government—these individuals formally and finally, on the 15th august [1829], abandoned all further pretensions to the property in question, with the purpose, as avowed, of resorting to their own Government for protection and relief. [Further legal proceedings are here recounted.]

. . . . . .

Accordingly on the 21st of may 1830, the Prefect decreed that, in consequence of the refusal of Mr. Lafage to pay the Costs and expenses, and participate in the appointment of appraisers, the proper officer at La Guaira should appoint said appraisers ex officio, and proceed with the appraisement, "selling a sufficient quantity of the property to pay the expenses of the detention of the vessel, the costs of suit, and an account in favor of the mariners of the crew, preferred by the U. States Consul at that port, against the vessel".

By order of the Government an examination and appraisement of the vessel and cargo, had been made or concluded on the 7th of September previous, shortly after their abandonment by the parties interested, which appears to have been conducted according to the forms required by the law, and with a fair degree of justice and impartiality. The appraisement of the Cargo is signed by the appraisers, the officers of the Government employed in the tobacco rents and Custom-house, and the parties interested; showing the whole cargo to have been estimated, at that date, at the sum of $5930.68; and at the foot of said appraisement over

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said signatures, is the following statement [translation]; "With which, and for not being more of the cargo to appraise, this operation was concluded, the appraisers manifesting that not even the good tobacco can remain long in store without becoming useless, and that of the three last classes, without entirely rotting".

The value of the vessel, tackle &c, was appraised at the sum of—$4846.

. . . . . .

It thus appears that on the 7th September 1829, the value of both vessel and cargo was appraised at the aggregate sum of $10.776.68.

By reference to the appraisements made in June and July 1830, in conformity with the last mentioned decree of the Prefect (of may 21st 1830), it will be seen that the same property was valued at rates, which, (the quantities being the same) would have yielded a result, approximating one third of the former valuation; and by reference to the account of sales, rendered on the 13th October 1830, that the nett proceeds of said sales fall short of one fourth of said valuation.

Such was the deterioration in value, of the vessel and cargo, by the neglect and waste of those charged with their care, and the unavoidable action of the elements, through the wet and the dry season in the port of La Guaira, that the whole proceeds were consumed by the extraordinary costs and expenses, for payment of which they were sold; leaving besides, a large bill of expenses in favor of the Customhouse, unpaid.

Of the whole value of their vessel and cargo, seized by the Government authorities more than a year previous, and estimated to be worth by the Government's own agents, near the sum of $11.000, the parties interested realized not a cent. Solely was the Consul of the U. States (and not until) in December 1831, enabled to secure the appropriation of some four hundred and forty dollars, to the payment, in part, of a privileged debt—the debt due from the vessel to the mariners that had composed her crew.

This result demonstrated very clearly the utter futility, and the injustice, of the obstinate persistence by the authorities in requiring the supercargo to pay all costs and expenses, and take back the vessel and cargo, in the state in which they were found, during the month of November 1829 and subsequently. If he had acquiesced in such a termination of the affair, the result would have been far worse for him; for the proceeds of the sale of vessel and cargo not being sufficient to pay these enormous expenses, he doubtless would have been further prosecuted, and perhaps might have been incarcerated, for not paying the balance. . . .

Argument in support of the claim for indemnity now preferred, is deemed by the undersigned superfluous. The facts of the case are unquestionable, intelligible and of easy construction. The claimants committed no fault, either of discretion or law. It was lawful for them to anchor their vessel, laden with tobacco, in the port of La Guaira, and sell the cargo to the Government, for the Government's own benefit, in the use of the monopoly it had by law established for itself. Throughout the whole transaction they acted with the utmost openess, candor and good faith. In violation of the rights of hospitality, of customs and usages, consecrated amongst civilized communities from time immemorial, and of rights of property and persons, expressly guarantied by the laws of Venezuela, as well as by the terms of the international Compact existing with her, as one of the States that had composed the then expiring Republic of Colombia, their property was seized and sequestrated by the high authorities of the State; and notwithstanding at every trial they were acquitted of all delinquency, it was never possible for them to recover possession of said property, but upon terms worse than useless; terms which would have made the damage to them much greater, at the time, whilst, in the end, serving as a pretext, to counteract and weaken their just claim for indemnity.

The right of the claimants to indemnity was recognized repeatedly by the decrees of the Prefect and the Superior Court, during the last stages of the proceedings; reference was had by order of the Superior Court, to the Supreme Government, upon the question; appraisements of the value of the property at different periods, with especial reference to the damages suffered, were made by order of the same tribunal—but all without any practical effect in behalf of said claimants.

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These wrongs were perpetrated by the authorities of Venezuela, whilst in the very act of their separation from the Republic of Colombia. Their consummation dates subsequent to the month of November 1829, in which the Capital, followed by the whole Republic, threw off its anomalous allegiance to the Colombian Dictator, and assumed that untrameled, separate and independent organization, which has been maintained until the present period. The resolution of the Civil and Military Chief, Gen. José Antº Paez, of the 25th February [1830], which was judicially construed by the Superior Court, and accordingly executed by the Prefect, as confirming their anterior decrees, ordering the return of the vessel and cargo, upon the onerous condition of the previous payment by the supercargo of all costs and expenses, was the act of the Supreme and only head of the Venezuelan Government at that period—of the man in whose hands were concentrated all the powers of the political System then existing. Indeed, the Constitution of the Republic of Venezuela, framed during the year 1830, *bears a date prior to the final execution of these decrees.* It is therefore to the Government of Venezuela alone, that resort can be had for the satisfaction of the indemnity claimed.

THE SETTLEMENT

The amount of the indemnity here agreed upon, $30,200, included principal adjusted at $14,000 and interest at 6 percent from July 1829 to the dates fixed for payment. Although it is not so stated in the convention, this sum was payable in dollars *macuquinos* (D.S., 5 Despatches, Venezuela, No. 60, May 14, 1848).

The decree approving this convention, which had originated in the Venezuelan Senate, was passed by the House of Representatives on May 21, 1850, and received the Executive sanction on May 23 (D.S., 8 Despatches, Venezuela, No. 6, May 29, 1850; that decree, including the Spanish version of the convention, which is there erroneously dated April 7, 1848, is printed in Recopilacion de leyes y decretos de Venezuela, II, 579); but no appropriation was at that time made for the payment of the indemnity.

The next Congress, however, passed a law, which was approved by the Executive Power on April 11, 1851, "adding to the appropriation bill of the current fiscal year of Venezuela, the sum of thirty thousand and two hundred dollars, for the payment of the stipulated indemnity in the case of the 'Sarah Wilson'" (D.S., 8 Despatches, Venezuela, No. 17, May 5, 1851; Recopilacion de leyes y decretos de Venezuela, III, 9–10). No provision was made in that law for interest on the indemnity from the dates upon which the instalments became due in terms of the convention, August 31 and November 30, 1848.

On July 21, 1851, Isaac Nevett Steele, who had succeeded Shields as Chargé d'Affaires at Caracas, received from the Venezuelan Government $30,200, Venezuelan currency, in payment of the sum stipulated in the convention, with which he purchased a bill for $22,792.45, United States currency, the rate of exchange being 132½ cents Venezuelan money to the dollar (D.S., 8 Despatches, Venezuela, No. 19, July 23, 1851). Various attempts to have an appropriation made for additional interest met with no success (see 9 *ibid.*, No. 24, March 18, 1852, and No. 37, March 3, 1853).

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The Liability

By this convention, liability in the case of the brig *Sarah Wilson* was accepted by the Republic of Venezuela. The earliest instruction regarding the claim was that of March 10, 1830, to Thomas P. Moore, Minister to Colombia (D.S., 14 Instructions, American States, 65–66); Moore was thereby directed to present the claim to the Government of Colombia on behalf of the owner, Victor Roumage, a merchant of New Orleans; in 1839 the claim was laid by James Semple, Chargé d'Affaires to New Granada, before the Board of Plenipotentiaries under the convention of December 23, 1834, between New Granada and Venezuela, a convention to which Ecuador later acceded (D.S., 9 Despatches, Colombia, No. 13, February 20, 1839, enclosure); the case of the *Sarah Wilson* was one of those listed in the instruction to Benjamin A. Bidlack, Chargé d'Affaires to New Granada, of June 23, 1845 (D.S., 15 Instructions, Colombia, 93–100), with a reference to the instruction to Moore of March 10, 1830; and quite surprising is the fact that after this convention was made a copy thereof (the date being erroneously stated as April 25, 1848) was enclosed by Secretary of State Clayton with the first instruction, of July 10, 1849, to John T. Van Alen, Chargé d'Affaires to Ecuador, who was informed that the convention with Venezuela "will at the proper time serve as the basis of the adjustment of the same claim with the Government of Ecuador" (D.S., 1 Instructions, Ecuador, 12–17). However, the supposed claim against Ecuador appears not to have been pressed.

A claim in the case of the *Sarah Wilson* before the Commission under the convention with Colombia of February 10, 1864, was adjudged not valid (Moore, International Arbitrations, II, 1418, case 54).

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NEW GRANADA : APRIL 25, 1848

Convention for the Settlement of the Case of the Brig "Native", signed at Bogotá April 25, 1848. Original doubtless in Spanish and probably in English also; no Spanish version is available.
Not subject to ratification by the United States. As to ratification by New Granada, see the editorial notes. Not proclaimed.

The undersigned Chargé d'affaires of the United States, Benjamin Alden Bidlack and the Secretary of Foreign Relations of New Granada, Manuel Maria Malla[ri]no having met with the object of settling the claim presented by the said chargé d'affaires in fovor of the owners of the American brig Native and its cargo which in 1828 were seized by the Colombian vessel of War "Indipendence"; have agreed that said claim shall be disposed of in the manner which is expressed in the folowing articles.

ARTICLE FIRST:

The Government of New Granada agrees to pay to the order of the said Chargé d'Affaires sixteen thousand dollars in current money at eight Granadian *reales* to the dollar as the only and absolute indemnification for all the damages, losses and prejudices which have given origen to the said claim of the owners and those interested in the brig "Native" and its cargo, and they shall have no right to institute any new claim on the same account:

ARTICLE SECOND:

The expressed sum of sixteen thousand dollars (16.000$) shall be paid at the general treasury of the central district, in twelve dividends, and in the folowing form, one thousand three hundred and thirty three dollars and seventy cents in the month of september next, and one thousand three hundred and thirty three with thirty cents (1.333.^{33}/$_{100}$ in each one of the following eleven months untill a compleet payment of the said sixteen thousand dollars.

ARTICLE THIRD

This agreement shall be presented to the executive power of New Granada and to the congress of the same at its present session in

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order, if they think best they may apropriate the necesary quanity to give it its exact fullfillment.

In faith of which the undersigned have signed two copies of this agreement both of the same tenor and form, in Bogotá the twenty first [twenty-fifth] [1] of April, one thousand eight hundred and forty eight.

Signed B A BIDLACK M M MALLARINO

NOTES

It is not to be doubted that this convention was written in Spanish; probably there was an English version also; but the only available source text is a "copy", in English, which was transmitted with the despatch of Benjamin A. Bidlack, Chargé d'Affaires at Bogotá, under date of June 10, 1848 (D.S., 11 Despatches, Colombia, No. 56), wherein he wrote:

> Mr Briggs [Driggs], the claimant, has at various times presented different accounts varying the amount claimed and increasing the amount originally demanded
> I found it utterly impossible to prevail with this Government to pay more than the amount of the original claim and interest. . . .

Despite the fact that both in the copy of the convention which is the source text here and in the covering despatch of Bidlack of June 10, 1848, above cited, the date of the convention is given as April 21, 1848, there can be no doubt that the correct date is April 25. The conference between the Plenipotentiaries at which the terms of the convention were agreed upon was held on April 24; the project drafted by the Government of New Granada was presented on that date; and on the following day the two examples of the convention were transmitted to Bidlack for signature (*ibid.*, Nos. 55 and 56, May 27 and June 10, 1848, enclosures; Legation Archives, Colombia, Letters from the Government at Bogotá, 1845–54). Moreover, a note of April 27 from the Plenipotentiary of New Granada to Bidlack refers to "one of the two examples of the convention concluded and duly signed on the 25th of the present month" in the case of the *Native* (D.S., 11 Despatches, Colombia, No. 56, June 10, 1848, enclosure, translation); in subsequent correspondence the convention is referred to by date of April 25; and the act of the Congress of New Granada of June 3, 1850, which appropriated funds for payment under this agreement, refers to "the convention concluded between the Executive Power and the Legation of the United States on the 25th of April, 1848" (Codificación nacional de Colombia, XIV, 103, translation).

THE FULL POWERS

Neither in the convention nor in the despatches is there any mention of full powers. Under date of May 30, 1845, however, Bidlack had

[1] As to this date, see the editorial notes.

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been given a full power with authority "to agree, treat, consult and negotiate of and concerning claims of citizens of the United States upon the late Republic of Colombia and the said Republic of New Granada" (D.S., 3 Credences, 141).

The Case of the "Native"

The facts in the case of the *Native* are stated in the notes to the convention with Venezuela of November 16, 1846 (Document 123). As the events from which the case arose took place in 1828, the claim was originally one against the former Republic of Colombia. The liability therefor had devolved upon the three successor Republics (see the notes to Document 67), the share of New Granada being 50 percent. As to the settlements reached with Venezuela and Ecuador, see the notes to the conventions with Venezuela of November 16, 1846 (Document 123), and with Ecuador of February 5, 1853.

The Settlement

The adjustment with New Granada of the claim in the case of the brig *Native* was negotiated on a somewhat different basis from that of the settlement made with Venezuela. There the primary figures were those set forth in the letter of Seth Driggs, the claimant, dated June 16, 1838 (quoted in the notes to Document 123). In that letter the figure given, including interest to November 1838, was $17,793.48, to which some eight years' further interest at 6 percent was added; the calculated total of the respective claims against the three successor states, New Granada, Venezuela, and Ecuador, was $33,500 *macuquinos;* it was in the exact amount of $17,793.48 that the claim had been presented by James Semple, Chargé d'Affaires at Bogotá, on February 16, 1839, to the Plenipotentiaries of New Granada, Venezuela, and Ecuador (D.S., 11 Despatches, Colombia, No. 56, June 10, 1848, enclosure B to the enclosed note of Manuel María Mallarino, Secretary of Foreign Relations of New Granada, to Bidlack, dated April 27, 1848). Here the basis taken was that originally stated by Thomas P. Moore, Minister to Colombia, pursuant to his instructions of February 14, 1831 (cited and quoted in the notes to Document 123), as follows (*ibid.*, enclosure A):

> The Brig Native Clarke Davis master loaded by J. N & R M Clarke & Co and J. Forbes & son merchants of the city of New Haven State of Connecticutt. Sailed from New Haven on 3^{d} October 1828 bound for Guiria a port in the Gulf of Paria Columbia with the following cargo intended for transhipment to the Island of Trinidad.
>
> 58 Horses
> 1721 Sugar hhds Sshooks
> 21 Molasses hhd Shooks.
> 5 M. Hoops.
> 4697 feet white pine boards.
> 2990 Red Oak staves
> 75 water hhds and Hay Oats & other provender for stock
>
> Said Vessel arriving in the Gulf of Paria on 2^{d} November following and permission having been obtained by Seth Driggs Esquire the consigner of the cargo from the constituted authorities, the said vessel proceeded to the port of Yacua

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in said before mentioned Gulf of Paria where she anchored on 7th November. That while lying at this place agreeable to permission the master landed 40 horses, 500 Staves, 400 Shooks and inmediately transhipped them on board the British Brig *Fanny* for the Island of Trinidad. That on the 12th of the said month after the transhipping above mentioned while lying at anchor as aforesaid said Brig was forcebly taken possession of by the Columbian Schooner of war Independencia a price crew put on board & the master taken out and detained on board said Schooner until the 16th November and after proceeding to Guiria & back to Yaqua, the Native was ordered by said Schooner & in charge of said prise crew to Puerto Cabello, where she arrived on 22d November, having been robbed by the said Schooner of war Independencia of sundry articles of provissions, cordage &c Shortly after her arrival al Puerto Cabello, it was judged better for all parties concerned that the horses should be sold & they were put up at auction and sacrificed as was also the inboard cargo and vessel after a further detention & no prospect of inmediate decision in the case. The protests of Clarke Davis master, Samuel J Masters Mate, Isaac Pinto a passenger & Seth Driggs consigner establish the above facts most fully.

The shippers of said cargo being as they had full & sufficient reason to suppose in a perfectly legal trade authorized by the treaty subsisting between the United States of America and the Government of Columbia, claim of said Government of Columbia a full indemnity for the damages arising to them from the unlawful capture & detention of the said brig Native & cargo a statement of which is hereunto annexed and from which it will be perceived the loss amounts to nearly a total one

Said case was continued in the Courts of Columbia until the 30th June 1829 when said vessel and cargo were cleared and restitution of the same ordered, but no damages or expenses awarded.

It will be a sufficient proof that said port of Guiria or Yaqua were considered ports of entry for foreign vessels by the Columbian Government, when we state the fact of the brig *Native* having been there two previous voyages as well as several other american vessels all of which had paid duties and transhipping their cargoes under licences from the authorities of Trinidad.

The New Haven Inssurance Company having issued & paid a policy on said vessel to the amount of five thousand Dollars also make a claim for said sum with the expenses defending said suit.

J Forbes & Son
J. N. O R M. Clarke } *Owners*
G. Totten. *Pres*t *New Haven Insurance C*o

Claim for Cargo Brig Native [1]

Nett value of cargo on board at the time of capture as pr Seth Driggs statement with proof accompanying		$5828. 68	
add two privilege horses	285.		
deduct freight to Trinidad	10.	275.	
		6103. 68	
deduct from this sum nett sales cargo at Puerto Cabello	1562. 32		
deduct ⅓ to make the cargo good bring in macuquina Dolls.	173. 59		
	1388. 73		
loss in exchange in remitting	127.		
	1261. 73		
Average expenses incurred in defending suit	737. 42	524. 31	$5572 37
Total nett value cargo claimed $5572.37			

[1] It will be seen that the arithmetical results of the figures given are not strictly accurate.

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Claim for Cargo Brig Native—Continued

The New Haven Insurance Compy. claim Total loss on Brig Native paid for on policy		5000.		
proportion charges for defending suit, wages and victualing officers & crew until sold		1095. 46		
		6095. 46		
deduct nett sales vessel in Puerto Cabell	588. 80			
less ⅛ bring in macuquina Dolls	65. 42	523. 38	$5571	08
Total claimed on vessel $5571.08				
Total claimed for cargo & vessel as above Eleven thousand one hundred forty three 45/100 Dolls			$11143	45
We also claim damages for loss of the voyage in consequence of the detention			3000	

It was pointed out in some detail in the cited note of April 27, 1848, from the Secretary of Foreign Relations of New Granada, that the proper method of the calculation would be the following: To the amount of the claim as presented in 1831, $14,143.45, add twenty years' interest at 6 percent, or $16,972.14. This would give $31,-115.59. The 50 percent liability of New Granada would thus be $15,557.79½, whereas the round sum agreed to be paid by the convention was $16,000.

Execution of the Convention

This convention provided for the payment of "sixteen thousand dollars in current money at eight Granadian *reales* to the dollar" as complete and final indemnification in the case of the *Native*. Payment was to be made in twelve monthly instalments beginning in September 1848.

Apparently unaware of the signature of this convention, Thomas M. Foote, Chargé d'Affaires at Bogotá, on February 5, 1850, addressed a note to the New Granadan Secretary of Foreign Relations, asking for a settlement of the claim in the case of the *Native* (D.S., Legation Archives, Colombia, Communications to Consuls and Others on Public Business). On February 26, 1850, the Secretary of Foreign Relations replied that "under date April 25th 1848 a convention was made between this department and the American Legation in Bogotá, in which the terms were arranged definitely for the payment on the part of New Granada of the claim in question; and that although the said convention has not yet been examined by the Congress, notwithstanding it was laid before it without loss of time, it will probably be so in the approaching sessions" (*ibid.*).

An act of the Congress of New Granada of June 3, 1850, contained an appropriation of 128,000 *reales* "conformably to the convention concluded between the Executive Power and the Legation of the United States on the 25th of April, 1848", and a further appropriation

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of 32,000 *reales* "for payment of interest to the owners of the American brig *Native* and of her cargo" (Codificación nacional de Colombia, XIV, 103, translation); at what rate this interest *de demora* was calculated and for what period is not stated.

Yelverton P. King, Chargé d'Affaires at Bogotá, was informed by the Secretary of Foreign Relations of New Granada under date of March 8, 1852, that payment would be made as soon as a person authorized to receive it should present himself to the Secretary of the Treasury (D.S., Legation Archives, Colombia, Communications to Consuls and Others on Public Business). King transmitted this information to Seth Driggs, the claimant, who was then in Venezuela, under date of March 9 (*ibid.*); there was further correspondence; the resulting understanding was that the money should remain in the Venezuelan Treasury until Driggs, who was to arrive in Bogotá in March 1853, could collect it in person (D.S., Legation Archives, Colombia, Communications to the Government at New Granada, etc., letter of Driggs of January 15, 1853).

In a despatch of April 6, 1853, King wrote as follows (D.S., 12 Despatches, Colombia, No. 14):

> I have been detained here much longer than I expected, waiting for Mr Seth Driggs the owner of the claim in the case of the Brig "Native". I desired very much to arrange and settle this claim before I left: In this I have been disappointed. . . .
>
> If I knew where or with whom I could deposit the amount with *safety*, I would draw it from the Treasury and place it where he could get it, when he does come, but as it is uncertain *when* he may come if at all I have concluded to leave it where it is, untill my successor shall arrive. The amount due him under the convention is $16.000. Principal, and something over $4.000 Interest.

The sums appropriated for the payment of the claim by the act of the Congress of New Granada of June 3, 1850, above cited, having, it seems, reverted to the Treasury, a new appropriation of 128,000 *reales* as "indemnification to the owners of the American brig *Native* and of her cargo" and of 32,000 *reales* as "payment of interest to the owners of said brig and cargo, as complete and final indemnification for the delay in payment of the principal sum above stated", was made in an act of June 18, 1853 (Codificación nacional de Colombia, XV, 583–84, translation).

In a note of January 19, 1854, to the Secretary of Foreign Relations of New Granada, James S. Green, then Chargé d'Affaires and later Minister Resident at Bogotá, stated that he was "authorised and requested by Mr. Seth Driggs, to receive the amount due him by the Government of New Granada, under the convention entered into on the 25th of April 1848, on the subject of his claim for the Brig 'Native' and her Cargo" (D.S., Legation Archives, Colombia, Communications to the Government at New Granada, etc.); on March 7, 1854, the Secretary of Foreign Relations wrote that "to-day the Secretary of the Treasury is directed to put at the disposition of that Legation the amount agreed as indemnity to the proprietors of the Brigantine '*Native*'" (D.S., 13 Despatches, Colombia, No. 6, April 4, 1854, enclosure; Legation Archives, Colombia, Communications to the Government at New Granada, etc.).

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The subsequent facts are not precisely stated in the available records; unquestionably the money was paid, and almost certainly not to Green; probably it was received by John A. Bennett, as agent for Driggs, in June or July 1854; Bennett was of New York and was consul at Bogotá from 1851 to 1856 (see D.S., Colombian Claims, folder *Native*, affidavit of Green dated September 9, 1861).

An act of the Congress of New Granada of June 6, 1855, appropriated $640 "to pay to the owners of the brig *Native* the interest on $16,000 from the month of March 1849, with which sum the payment of this claim shall be completed" (Codificación nacional de Colombia, XVI, 221, translation); but it does not appear whether this sum was paid over to the claimant.

In respect of the *Native* a further claim of $800 interest was made by Driggs under the convention with New Granada of September 10, 1857; but this was disallowed by the Commission (Moore, International Arbitrations, II, 1392, case 35).

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Treaty Series No. 8
9 Statutes at Large, 944–48
18 *ibid.*, pt. 2, Public Treaties, 24–26

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AUSTRIA : MAY 8, 1848

Convention for the Extension of Certain Stipulations Contained in the Treaty of August 27, 1829 (Document 66), signed at Washington May 8, 1848. Original in English and German.
Submitted to the Senate May 12, 1848. (Message of May 9, 1848.)
Resolution of advice and consent, and resolution of advice and consent to the exchange of ratifications at any time prior to July 4, 1850, February 13, 1850. Ratified by the United States February 15, 1850. Ratified by Austria January 31, 1849. Ratifications exchanged at Washington February 23, 1850. Proclaimed February 25, 1850.

Convention for the extension of certain stipulations, contained in the Treaty[1] of Commerce and Navigation of 27 August 1829 between the United States of America and His Majesty the Emperor of Austria.

The United States of America and His Majesty the Emperor of Austria having agreed to extend to all descriptions of property the exemption from dues, taxes or charges, which was secured to the personal goods of their respective citizens and subjects by the eleventh article of the Treaty of Commerce and Navigation which was concluded between the Parties on the twenty-seventh of August 1829; and also for the purpose of increasing the powers granted to their respective Consuls by the tenth article of said treaty of commerce and Navigation, have

Vertrag über die Ausdehnung gewisser in dem Handels- und Schiffahrts-Vertrage[1] vom 27. August 1829 enthaltenen Bestimmungen zwischen Seiner Majestät dem Kaiser von Oesterreich, und den Vereinigten Staaten von Nord-America.

Nachdem Seine Majestät der Kaiser von Oesterreich und die Vereinigten Staaten von Nord-America übereingekommen sind, die in dem Artikel XI des Handels- und Schiffahrts-Tractates vom 27 August 1829 den beiderseitigen Staats-angehörigen für ihr bewegliches Vermögen zugesicherte Befreiung von Taxen und Abgaben auf alle Arten von Eigenthum auszudehnen und ebenfalls die in dem Artikel X erwähnten Handels- und Schiffahrts-Tractates den respectiven Consuln zugesicherten Befugnisse zu vermehren, so sind heizu von beiden Seiten

[1] Document 66.

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named for this purpose their respective Plenipotentiaries, namely, the President of the United States of America has conferred full powers on James Buchanan, Secretary of State of the United States, and His Majesty the Emperor of Austria upon His Chargé d'affaires to the United States, John George Hülsemann; who, after having exchanged their said full Powers, found in due and proper form, have agreed to, and signed, the following articles:

ARTICLE I.

The citizens or subjects of each of the contracting Parties shall have power to dispose of their personal property within the States of the other, by testament, donation, or otherwise; and their heirs, legatees and donees, being citizens or subjects of the other contracting Party, shall succeed to their said personal property, and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their pleasure, paying such duties only as the inhabitants of the country where the said property lies, shall be liable to pay in like cases.

Bevollmächtigte ernannt worden, als nämlich von Seiten Seiner Majestät des Kaisers von Oesterreich Allerhöchst Dessen Geschäftsträger bei den Vereinigten Staaten Herr Johann Georg Hülsemann, und des Praesidenten der Vereinigten Staaten von Nord-America Herr James Buchanan, Staatssecretair der Vereinigten Staaten, welche Bevollmächtigte, nach vollzogener Auswechslung ihrer in guter und gehöriger Form befundenen Vollmachten, nachstehende Artikel festgesetzt und unterzeichnet haben.

ARTIKEL I.

Den Staatsangehörigen eines jeden der abschliessenden Theile soll in den Staaten des andern die Freiheit zustehen, über ihre beweglichen güter durch Testament, Schenkung, oder auf andere Weise zu verfügen; deren Erben, durch Testament, oder ab intestato, oder durch Schenkung hiezu berechtigt, sollen, wenn sie die Staatsangehörigen des andern der beiden abschliessenden Theile sind, ihnen in dem Besitze dieser ihrer beweglichen Güter folgen, auch in Person so wohl, als durch andere, welche an ihrer Stelle handeln; davon Besitz ergreifen und nach Gutdünken damit schalten können, ohne andere Steuern zu bezahlen, als solche, welche die Einwohner des Landes, worin sich die genannten Güter befinden, bei gleichem Anlasse unterworfen sind.

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ARTICLE II.

Where, on the death of any person holding real property, or property not personal, within the territories of one Party, such real property would, by the laws of the land, descend on a citizen or subject of the other were he not disqualified by the laws of the country where such real property is situated, such citizen or subject shall be allowed a term of two years to sell the same; which term may be reasonably prolonged according to circumstances; and to withdraw the proceeds thereof, without molestation, and exempt from any other charges than those which may be imposed in like cases upon the inhabitants of the country from which such proceeds may be withdrawn.

ARTIKEL II.

Wenn durch den Tod irgend eines Besitzers von Immobilien oder Grundeigenthum, welche sich auf dem Gebiete des einen der abschliessenden Theile befinden diese Immobilien oder Grundeigenthum nach den Gesetzen des Landes auf einen Staats-Angehöigen des andern Theiles übergehen sollen, so wird diesem, wenn er nach den Gesetzen des Landes wo des unbewegliche Vermögen liegt zu dessen Besitze unfähig ist, ein Aufschub von zwey Jahren gewahrt, welcher Termin nach Umständen in angemessener Weise verlängert werden kann, um dieselben zu verkaufen, und um den Ertrag davon ohne Anstand und frey von allen andern Abgaben zu beziehen, als solchen, die in dergleichen Fällen den Einwohnern des Landes auferlegt werden, aus welchem dieser Ertrag exportirt wird.

ARTICLE III.

In case of the absence of the heirs, the same care shall be taken, provisionally, of such real or personal property as would be taken in a like case of property belonging to the natives of the country, until the lawful owner, or the person who has a right to sell the same according to Article II.

ARTIKEL III.

Im Fall der Abwesenheit der Erben wird man hinsichtlich der erwähnten, beweglichen or unbeweglichen Güter provisorisch ganz dieselbe Sorgfalt anwenden, welche man bei gleichem Anlasse hinsichtlich der Güter der Eingeborenen angewendet hätte, bis der gesetzmässige Eigenthümer oder

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may take measures to receive or dispose of the inheritance.

derjenige, welcher nach Artikel II das Recht hat, dieselben zu verkaufen, Anordnungen zu treffen für gut finden wird, um die Erbschaft anzutreten oder darüber zu verfügen.

ARTICLE IV.

The high contracting Parties grant to each other the liberty of having, each in the ports of the other, Consuls, Vice Consuls, Commercial Agents and Vice Commercial Agents, of their own appointment, who shall enjoy the same privileges and Power, as those of the most favoured Nations; but if any of the said Consuls shall carry on trade, they shall be subjected to the same laws and usages to which private individuals of their nation are subjected in the same place.

The said Consuls, Vice Consuls, commercial and Vice commercial Agents, shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the masters and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or tranquillity of the country; or the said Consuls, Vice Consuls, commercial Agents or Vice Commercial Agents should

ARTIKEL IV.

Die hohen contrahirenden Theile gestehen einander die Befugniss zu, jeder in den Häfen des andern selbst bestellte Consuln, Vice-Consuln, Handels-Agenten und Vice-Handels-Agenten zu underhalten, welche die nämlichen Privilegien, und Befugnisse wie diejenigen der begünstigtsten Nationen geniessen sollen; wenn jedoch der eine oder der andere der genannten Consuln Handel treiben will, so sollen dieselben den nämlichen Gesetzen und Gebräuchen unterworfen seyn welchen Privatpersonen ihrer Nation in demselben Orte unterliegen.

Die Consuln, Vice-Consuln, Handels und Vice-Handels-Agenten sollen des Recht haben, als solche, bei Streitigkeiten, welche zwischen den Capitains und Mannschaften der Schiffe der Nation, deren Interessen sie wahrzunehmen beauftragt sind, entstehen mögen, als Richter und Schiedsmänner zu handeln, ohne Dazwischenkunft der Orts-Behörden, wenn nicht etwa das Benehmen der Mannschaften oder des Capitains die Ordnung oder Ruhe des Landes stört, oder die besagten Consuln, Vice-Consuln, Handels-

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require their assistance in executing or supporting their own decisions. But this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their own country.

The said Consuls, Vice Consuls, commercial Agents and Vice Commercial Agents are authorized to require the assistance of the local authorities for the search, arrest and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply in writing to the competent tribunals, judges and officers, and shall demand said deserters, proving by the exhibition of the registers of the vessels, the muster rolls of the crews, or by any other official documents, that such individuals form legally part of the crews; and on such claim being substantiated, the surrender shall not be refused.

Such deserters, when arrested, shall be placed at the disposal of the said Consuls, Vice Consuls, commercial Agents and Vice commercial Agents, and may be confined in the public prisons, at the request and cost of those who

Agenten oder Vice Handels-Agenten deren Beistand zu Vollziehung oder Aufrechthaltung ihrer Entscheidungen in Anspruch nehmen. Es-versteht sich jedoch dass diese Art vom Urtheil oder schiedsrichterlichen Entscheidung die streitenden Theile nicht des ihnen zustehenden Rechts berauben soll, bei ihrer Zurückkunft an die richterliche Behörde ihres eigenen Landes sich zu wenden.

Die Besagten Consuln, Vice-Consuln, Handels-Agenten und Vice-Handels-Agenten sind befugt, den Beistand der Ortsbehörden zu Aufsuchung Festnehmung und Gefangensetzung der Deserteurs von den Kriegs- und Handels-Schiffen ihres Landes in Anspruch zu nehmen. Zu diesem Behufe, haben sie sich schriftlich an die competenten Gerichte, Richter und Beamten zu wenden und die besagten Deserteurs zu reclamiren indem sie durch Beibringung der Schiffsregister, Muster-rollen der Mannschaften oder anderer amtlicher Urkunden darthun, dass jene Individuen gesetzlich zu den Mannschaften gehören, und wenn diese Reclamation also begründet ist, so soll die Auslieferung nicht versagt werden.

Wenn dergleichen Deserteurs festgenommen sind, so sollen sie zur Verfügung der besagten Consuln, Vice-Consuln, Handels-Agenten und Vice Handels-Agenten gestellt werden, und können sie, auf Requisition und Kosten

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shall claim them, in order to be sent to the vessels to which they belong, or to others of the same country. But if not sent back within three months from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause. If, however, the deserter shall be found to have committed any crime or offence requiring trial, his surrender may be delayed, until the tribunal before which his case shall be pending, shall have pronounced its sentence, and such sentence shall have been carried into effect.

derer, welche sie reclamiren, in den offentlichen Gefangnissen festgehalten worden, um auf die Schiffe, zu welchen sie gehören, oder auf andere desselben Landes, gesandt zu werden. Wenn sie aber binnen drei Monaten vom Tage ihrer Festnehmung an nicht zurück geschickt sind, so sollen sie in Freiheit gesetzt und wegen desselben Grundes nicht wieder verhaft werden. Wenn jedoch befunden werden sollte, dass Deserteur irgend ein Verbrechen oder vergehen begangen hätte, wegen dessen er vor Gericht zu stellen wäre, so kann dessen Auslieferung ausgesetzt werden, bis das Gericht, vor welchem seine Sache anhängig ist, das Urtheil gesprochen haben und dieses Urtheil zur Vollstreckung gebracht sein wird.

ARTICLE V.

The present Treaty shall continue in force for two years, counting from the day of the exchange of its ratifications; and if, twelve months before the expiration of that period, neither of the high contracting Parties shall have announced by an official notification to the other, its intention to arrest the operation of said treaty, it shall remain binding for one year beyond that time, and so on, until the expiration of the twelve months which will follow a similar notification, whatever the time at which it may take place.

ARTIKEL V.

Gegenwärtiger Vertrag soll vom Tage der Auswechslung der Ratifications-Urkunden Zwei Jahre in Wirksamkeit bleiben. Doch erlischt selber nach Verlauf dieses Zeitraums nur in dem Falle, wenn er von dem einen oder von dem andern Theile Zwölf Monate früher aufgekündigt wurde. Geschieht keine Aufkündigung zu der bestimmten Frist, so dauert der Vertrag auf unbestimmte Zeit fort, bis eine der contrahirenden Mächte ihn aufkündigt, wo sodann derselbe Zwölf Monate nach erfolgter Aufkündigung aufzuhören hat, wenn immer diese Aufkündigung geschehen sollte.

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ARTICLE VI.

This convention is concluded subject to the ratification of the President of the United States of America, by and with the advice and consent of the Senate thereof, and of His Majesty the Emperor of Austria; and the ratifications thereof shall be exchanged in Washington, within the term of one year from the date of the signature thereof, or sooner, if possible.

In witness whereof, the respective Plenipotentiaries have signed the above articles, as well in German as in English, and have thereto affixed their seals.

Done in the City of Washington on the eighth day of May, one thousand eight hundred and forty-eight, in the seventy-second year of the independence of the United States of America, and in the 14th year of the reign of His Majesty the Emperor of Austria.

[Seal] JAMES BUCHANAN
[Seal] HÜLSEMANN

ARTIKEL VI.

Gegenwärtiger Vertrag ist abgeschlossen worden, vorbehaltlich der Ratification Sr Majestät des Kaisers von Oesterreich und vorbehaltlich der Ratification des Praesidenten der Vereinigten Staaten von Nord-America nach und mit dem Rathe und der Einwilligung des Nord-Americanischen Senates; und es soll die Auswechslung der Ratifications urkunden innerhalb Jahresfrist vom Tage der Unterzeichnung des gegenwärtigen Vertrages angerechnet oder früher, wenn es möglich ist, in Washington statt finden.

Urkundlich dessen haben die beiderseitigen Bevollmächtigten oben stehende Artikel so wohl in Deutscher als Englischer Sprache unterzeichnet und ihre Siegel beigedrückt.

Ausgestellt zu Washington den achten May ein tausend acht hundert und acht un vierzig, im vierzehnten Jahre der Regierung Seiner Majestät des Kaisers von Oesterreich, und im zwei und sieberzigsten Jahre der Unabhängingkeit der Vereinigten Staaten von Nord-America.

NOTES

In the original of this convention in the treaty file the English version is written in the left columns and the German (not in German script) in the right. Throughout the English version, the United States is named first; throughout the German, Austria is named first;

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and the signature of the Plenipotentiary of the United States precedes that of the Plenipotentiary of Austria. The original is bound in the usual manner with the duplicate United States instrument of ratification of February 15 and the original proclamation of February 25, 1850.

The ratification of the Emperor of Austria, dated January 31, 1849, is written in Latin and includes the text of the convention in both languages, the German (in German script) on the left pages. Throughout both the German and the English version, Austria is named first; and the indication of the signature of the Plenipotentiary of Austria is at the left.

Other papers in the treaty file are the two attested Senate resolutions of February 13, 1850, and the certificate or act of the exchange of ratifications at Washington on February 23, 1850, which is written in English in customary form.

The Procedure

By Article 6 of the convention, it was provided that the exchange of ratifications should take place at Washington within one year from the date of signature, or by May 8, 1849. By note of April 6, 1849, the Austrian Chargé d'Affaires, Johann Georg Hülsemann, informed Secretary of State Clayton that the Austrian ratification had been received by him and requested the naming of a day for the exchange (D.S., 2 Notes from the Austrian Legation). Clayton, who had taken office a few weeks earlier (March 8), answered on April 28 that the convention had been "submitted to the Senate, the day following its conclusion; but it was not till this moment that I was officially informed that it had not been finally acted upon by that Body. The reasons for this omission have not been communicated" (D.S., 6 Notes to German States, 207). Hülsemann replied under date of September 26, 1849, that he had communicated Clayton's note of April 28 to the Imperial Government; that he had called attention to the delayed exchange of ratifications in the case of the treaty of August 27, 1829, which had in that case been caused by the non-arrival at Washington of the ratification of the Emperor of Austria (see the notes to Document 66); that he had received instructions to exchange the ratifications of the convention of May 8, 1848, as soon as the approval of the Senate should make this possible; and he requested that the matter be called to the attention of the Senate at its coming session (D.S., 2 Notes from the Austrian Legation).

The convention had been received in the Senate on May 12, 1848, when it was referred to the Committee on Foreign Relations and ordered printed (Executive Journal, VII, 411–12). No further action appears to have been taken during the Thirtieth Congress. The message of President Taylor of January 14, 1850 (read in the Senate on January 16), transmitted the mentioned correspondence of the previous year "between the Department of State and the Chargé d'Affaires of Austria" (Senate Confidential Document No. 3, 31st Congress, 1st session, Regular Confidential Documents, XXIII,

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933–36; Executive Journal, VIII, 126); the convention, on January 31, was again referred to committee and was reported on February 13; on the latter date a simple resolution of advice and consent was passed, with only two negative votes out of forty-three; and on the same date there was also adopted the following resolution regarding the exchange of ratifications (*ibid.*, 135, 140–41; attested resolution in the treaty file):

> Whereas the time limited by the 6th Article of the Convention for the extension of certain Stipulations contained in the Treaty of Commerce and Navigation of August 27th 1829, between the United States of America and His Majesty the Emperor of Austria, concluded at the city of Washington the 8th May, 1848, has expired before the ratification of the said Convention by the Senate, be it therefore,
>
> Resolved, (two-thirds of the Senators present concurring) That the Senate advise and consent to the exchange of ratifications of the Convention, aforesaid, at any time prior to the fourth day of July, next, whenever the same shall be offered by His Majesty the Emperor of Austria; and the said ratifications shall be deemed and taken to have been regularly exchanged, the limitation contained in said Convention to the contrary notwithstanding.

Ratification on the part of the United States and exchange of ratifications followed on February 15 and February 23, 1850, respectively; in the United States instrument of ratification both Senate resolutions of the previous February 13 are substantially set forth in the recitals.

The Full Powers

In his note of January 29, 1847 (D.S., 1 Notes from the Austrian Legation), the Austrian Chargé d'Affaires wrote that he was ready to communicate the full powers which he had just received to negotiate and sign (*a*) additional articles regarding consuls similar to Articles 11 and 12 of the treaty between the United States and Prussia of May 1, 1828 (Document 62), and (*b*) a treaty for the abolition of the *droit d'aubaine*, etc., similar to that between the United States and Bavaria of January 21, 1845 (Document 111). These full powers were embodied in two separate instruments (*ibid.*, July 15, 1847). Aside from the formal statement in the preamble of the convention of the exchange of the full powers, there is nothing else of record regarding the Austrian full powers, and no copy thereof is available.

It appears that in this case the original full powers were not exchanged, as the original of that granted to Secretary of State Buchanan under date of April 28, 1848, ten days before the convention was signed, and after its terms had been agreed upon, is in the treaty file. The document is in customary form, authorizing negotiations "for the extension of certain stipulations contained in the Treaty of Commerce and Navigation of the twenty seventh of August, 1829, between Austria and the United States, and of all matters and subjects connected therewith, which may be interesting to the two Governments" (D.S., 3 Credences, 244).

Also in the treaty file is the original full power issued to Secretary of State Clayton under date of February 16, 1850, to exchange the ratifications of the convention (*ibid.*, 336). It is not now customary

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to issue a full power to the Secretary of State to exchange ratifications of a treaty, as authority to act in such case is deemed inherent in the office.

The Negotiations

The negotiations which led to the signing of this convention were initiated by the Austrian Government. In a note of October 25, 1843, Hülsemann pointed out that taxes on emigration were not abolished by Article 11 of the treaty with Austria of August 27, 1829 (Document 66); he stated that the Emperor of Austria was disposed to treat on that question on a basis of reciprocity; and he inquired regarding the relevant laws of the United States (D.S., 1 Notes from the Austrian Legation). The answer of Secretary of State Upshur, of October 30, 1843, was appreciative and expressed willingness to enter into an additional convention (D.S., 6 Notes to German States, 87–88); but there were no further communications until more than two years later.

On November 25, 1845, Hülsemann wrote supporting complaints of captains of Austrian vessels that facilities were afforded to their crews to desert in the port of New Orleans and that the judicial authorities there required payment of the wages due to the deserters; he said that this was contrary to the law of Austria, which should be the rule for such cases, and that the Austrian consul had in vain claimed the right of decision therein; citing the most-favored-nation clause of Article 10 of the treaty with Austria of 1829 (Document 66), he referred to the rights of consuls under the treaties with Russia (Articles 8 and 9 of Document 75), Sweden (Articles 13 and 14 of Document 55), and other countries, and asked that measures be taken to the end that the judicial authorities at New Orleans should proceed conformably with the treaty provisions (D.S., 1 Notes from the Austrian Legation).

Secretary of State Buchanan answered on May 18, 1846; after summarizing the note received, he followed with these paragraphs on the consular clauses, including that of the most favored nation (D.S., 6 Notes to German States, 130–34):

> From the enclosed copy of a Report presented to the House of Representatives in March last, by the Committee on Foreign Affairs, it will be perceived, that, at the time when your first communication was received, the execution of the stipulation on this subject, contained in the Treaty between the United States and Prussia [Document 62], had, notwithstanding the very clear and express manner in which the right under consideration is thereby secured to the Consuls of that nation, encountered difficulties on the part of the Judicial authorities, which, until removed, deprived it of all practical effect; and which could be removed only by express legislation, specially adapted to the terms of that stipulation.
>
> Under these circumstances, and until Congress should have acted on the subject, any steps taken with a view to secure the same right to the Consuls of a nation, in whose favor it has not been expressly stipulated, could not but have proved fruitless. The contemplated legislation has not yet taken place; but even after the practical difficulty which calls for it shall have been removed, in regard to the Treaty with Prussia and others of the same kind, there is another question which cannot fail to present itself to the Judicial authorities, with respect to any claim to the enjoyment of the same right, which may be advanced on behalf of

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Consuls to whom it shall not have been secured in express terms. The question will be, whether it can be claimed under the general stipulation of the most favored nation. And, however disposed the State authorities may be to conform to a Treaty in which this right is expressly established, it is exceedingly questionable whether they would regard it as established by that general stipulation merely; and whether they would consider it a sufficient ground for relinquishing the jurisdiction over persons and things which it is alike their right and their duty to maintain within their respective territorial limits, so long as such jurisdiction is not superseded by the paramount authority conferred by the Federal Constitution upon Treaties. This authority, it cannot be expected that they will recognise, except so far as may plainly be required by a just and fair interpretation of the stipulations appealed to, whatever these may be. And, seeing that the right now under consideration, where it can be claimed under a Treaty wherein it is expressly conferred, is, in every such instance, given in exchange for the very same right conferred in terms equally express upon the Consuls of the United States; it cannot be expected that it will be considered as established by the operation of a general provision, which, if it were allowed so to operate, would destroy all reciprocity in this regard, leaving the United States without that equivalent in favor of their Consuls, which is the consideration received by them for the grant of this right wherever expressly granted.

With a view to the possible extension of this right to the Consuls of other nations under express reciprocal stipulations, it has been recommended by this Department, that the Bill, now before Congress, be so framed that its provisions shall apply not only to existing Treaties, but to those which may hereafter be entered into.

The report enclosed with the foregoing note of Buchanan was House Report No. 422, 29th Congress, 1st session, serial 489. Some interesting facts regarding the case of the Prussian vessel *Borussia* are disclosed by the papers therein printed. These include correspondence with the Minister Resident of Prussia, Baron von Gerolt, and with the United States Attorney for the District of Massachusetts, Robert Rantoul, Jr., and also the complaint of the Prussian consul at Boston, Gustavus Gossler, against the crew of the *Borussia*, dated June 8, 1844, invoking Article 10 of the treaty with Prussia of May 1, 1828 (Document 62); it was therein alleged that the crew had, at New Bedford, on June 6, refused to sail with the master, after a hearing and arbitration of the differences between commander and crew held by the consul general of Prussia at New York, John W. Schmidt; the complaint was made before the United States Commissioner for the District of Massachusetts, George T. Curtis; and it appears that the Commissioner, after consulting with Justice Story, decided that he had no jurisdiction, although the Federal Court in New York, in similar cases, had adjudged otherwise; the opinion of the judge went on the ground that "no jurisdiction is given by law to any courts or magistrates in the United States to carry into effect" the treaty provisions. The case of the *Borussia* was mentioned in the annual presidential message of December 2, 1845, recommending legislation (Richardson, IV, 399); the statute enacted, the earliest on the subject, is the act of August 8, 1846 (9 Statutes at Large, 78–79; see the note to Article 10 of the treaty of 1828 with Prussia, Document 62). That statute is word for word the same as the "original draft in Judge Story's hand writing" which that jurist had written and which was found among his papers after his death (on September 10, 1845); that draft was an enclosure to the letter of United States Attorney Rantoul

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of October 3, 1845, and is now therewith (D.S., Miscellaneous Letters, August–October 1845).

In his note of August 24, 1846, the Austrian Chargé d'Affaires asked if the United States would be disposed to enter into an extradition convention similar to those then existing with Great Britain (Article 10 of Document 99) and France (Documents 103 and 112) and referred to certain undescribed difficulties which had arisen in the execution of the treaty of 1829 and which might be obviated by additional articles (D.S., 1 Notes from the Austrian Legation). Buchanan answered to the effect that he was prepared to begin negotiations for an extradition convention and that the difficulties alluded to would be considered when specified, with every disposition to remedy them by additional stipulations (D.S., 6 Notes to German States, 143–44, August 31, 1846); copies of various treaties of the United States were furnished to the Austrian Chargé d'Affaires (D.S., 1 Notes from the Austrian Legation, August 31, 1846); and on January 29, 1847, Hülsemann wrote that he had transmitted to Vienna Buchanan's note of August 31, 1846, that he had just received instructions and full powers to negotiate and sign additional articles similar to Articles 10 and 11 of the treaty between the United States and Prussia of 1828 (Document 62) and also a treaty for the abolition of the *droit d'aubaine*, etc., similar to that of 1845 between the United States and Bavaria (Document 111), that he was prepared to begin the negotiation and to communicate his full powers, and that in the matter of extradition he would receive instructions at a later date (*ibid.*; negotiations regarding extradition were not undertaken).

The first definite project was that of Hülsemann, transmitted to Acting Secretary of State John Y. Mason [1] with a covering note of July 5, 1847 (*ibid.*). This draft of eight articles, with preamble and final clauses, was based on two earlier treaties of the United States; the pamphlet prints thereof, with changes shown thereon or on separate sheets, were used to make up the draft; aside from Article 7 thereof, the articles and final clauses were, with few slight changes, from the convention with Bavaria, in seven articles, of January 21, 1845 (Document 111), with the addition, however, to Article 1 of an excepting clause, so that the article read thus:

> Every kind of droit d'aubaine, droit de retraite, and droit de détraction or tax on emigration, is hereby and shall remain abolished between the two contracting parties, their States, citizens, and subjects, respectively; in the hungarian provinces as far as such taxes belong to the royal treasury, but in all other provinces of the Austrian Empire without any restriction.

Article 7 of the draft, containing the clauses regarding consuls, was taken from Article 9 of the treaty with Hanover of June 10, 1846 (Document 121).

To the concluding words of Article 1 of the draft, partially excepting the Hungarian Provinces from its provisions, objection was at once made, whereupon Hülsemann suggested that the *droit d'aubaine*

[1] Secretary of the Navy at the time; Buchanan was temporarily absent from Washington.

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clauses might be deferred and the convention limited to one for the extension of consular powers (D.S., 1 Notes from the Austrian Legation, July 15, 1847). Two days later he wrote as follows (*ibid.*, July 17, 1847):

Mr Hülsemann presents his respectfull compliments to the Hon. Secretary of State and begs leave to remind Mr Buchanan of His intention, to submit to the President and Cabinet Council to-day the intended treaty. Mr H. will call at the Department after Mr Buchanan's return, to learn the result, in order to make the necessary arrangements one way or the other.

It is no doubt true in *theory*, that the partial exception of Hungary makes that clause not alltogether reciprocal; but *practically* the advantages from the abolishment of the droit d'aubaine are allmost alltogether on Your side, because here, with the exception of Louisiana, and perhaps one or two other states, it does not exist, and is not likely to be established, neither by the states, nor much less by Congress.

Following consideration of the Austrian draft by President Polk, presumably at the Cabinet meeting of July 17 (see Diary of James K. Polk, III, 90–91, where there is no mention of the Austrian negotiations), Buchanan wrote to Hülsemann in these terms (D.S., 6 Notes to German States, 166–68, July 19, 1847):

I have had the honor to receive your note of the 17th instant, transmitting the projêt of a "Convention for the mutual abolition of the droit d'aubaine and taxes on emigration, and for the extension of Consular powers", which you propose to conclude in behalf of your Government with the United States.

This entire projêt has been approved by the President, with the exception of that clause of the first Article, which, in the Hungarian Provinces, limits the abolition of the "droit d'aubaine, droit de retraite, and droit de detraction, or tax on emigration", to such taxes only as "belong to the Royal Treasury".

You inform me that, there are certain Municipalities in these Provinces which exercise the droit d'aubaine and the right to levy such taxes; and with their privileges the Imperial Government would be unwilling to interfere. But the very object of the Convention is, to prohibit this unjust exercise of power in both countries; and if the privilege is to be reserved in the very places where it is certain to be exercised, this would destroy all equal reciprocity between the parties. Every one of our Treaties of a similar character has been reciprocal throughout the entire territories of each of the contracting Powers: and to exempt so important a portion of the Austrian Empire, as the Kingdom of Hungary, from the operation of the proposed Convention, would establish a new and inconvenient precedent in our policy.

The 11th Article of the existing Treaty of the 27th August 1829 [Document 66], provides fully and satisfactorily, throughout all the States of both parties, for the abolition of the droit d'aubaine and all discriminating taxes, so far as personal property is concerned. Although this Article is silent in regard to real estate or landed property; yet it is manifest that the same rule of justice ought to be applied to both kinds of property. Besides, the devise or descent of a real estate in Hungary to a citizen of the United States, will probably be an event of rare occurrence.

The President, sincerely desirous to bind still closer the ties of friendship which now so happily unite the Austrian Empire with the United States, cherishes the hope that, under these circumstances, the Imperial Government will obtain the consent of the Hungarian Municipalities to the conclusion of the Convention without any reservation in their favor.

Regretting that you had not found it convenient to remain here another day, I transmit this note to New-York, in accordance with your request. . . .

The foregoing note of Buchanan was transmitted to Vienna. On January 28, 1848, Hülsemann wrote to Buchanan that he had received

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additional instructions, adding (D.S., 1 Notes from the Austrian Legation, translation from the French):

> I transmit to you herewith the project modified according to those instructions, supposing that you will have no further objection to make to it; if this is so, I shall be ready to sign this convention as soon as you find it convenient.
>
> You will see, Sir, that the project is absolutely the same, except for the first article and the insertion of the eighth.

The modified draft which was enclosed with that note of January 28, 1848, is not with it in the volume cited, but is in D.S., 8 Drafts of Treaties. That paper, however, is not now in the same form as when transmitted with the note of January 28, and will hereafter be more fully described.

As compared with the previous Austrian proposal, the modified draft contained a new Article 8 (the former Article 8 becoming Article 9) which reads as does Article 5 of the convention, except that the stated term of definite duration, which is two years in the latter, was ten years, and in the modified draft Article 1 was recast so as to read as follows in the English:

> The stipulation, contained in the XIth Article of the Treaty of Commerce and Navigation of the 27th August 1829 [Document 66], —that the subjects or citizens of both contracting parties shall have power to take possession and dispose, at their will, of any inheritance mutually accruing, paying such dues, taxes or charges only, as the inhabitants of the country, wherein the said goods are, shall be subject to pay in like cases,—shall be applied to all cases of exportation of property from Austria to the United States of America and vice versa, in whatever way the exportation may take place, in consequence of the emigration of the owner, or of donation, or as marriage portion, or in any other way.

The Austrian Government had thus abandoned the exception written in Article 1 of the earlier draft, to which objection had been made by the Government of the United States.

As first written by Hülsemann, the modified draft of January 28, 1848, was a copy, nearly word for word, of the draft heretofore mentioned as having been submitted to the Secretary of State with a note of July 5, 1847, except that throughout the earlier draft the United States is named first and the English version is in the left-hand columns, whereas throughout the later draft Austria has precedence and the German version (not in German script) is in the left-hand columns. In the later draft, the preamble, eight articles, and final clauses of the earlier draft were written on one side only of the sheets of the manuscript, or, in other words, on the right-hand pages thereof as now bound. Hülsemann stated in his note of January 28, 1848, that the draft therewith transmitted was "absolutely the same" as the earlier draft, "except for the first article and the insertion of the eighth". Those two changes he had made in the draft by (1) striking out Article 1 and writing on the left-hand page facing that stricken article the new text thereof; (2) writing on the left-hand page facing the beginning of Article 8 the new Article 8; and (3) changing the number of the following article from 8 to 9.

On receipt of Hülsemann's modified draft, Buchanan made further proposals of changes, which were embodied in a "contre projet",

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seemingly a separate paper and probably in English only, which was handed to Hülsemann, together with his own draft, prior to February 8. No copy of that counterproject has been found in the archives of the Department of State; and it is not now possible to state precisely what proposed changes it contained; but it seems clear that one of Buchanan's proposals was the deletion of Article 1. In reply thereto, Hülsemann wrote on February 8 as follows (D.S., 1 Notes from the Austrian Legation):

> Mr Hülsemann in returning to the Hon. Secretary of State the projet of the treaty, begs leave to make the following observations:
>
> Allthough Mr H. does not consider the changes proposed by the Hon. Secretary in his projet as contrary to the spirit of his instructions, he has some hesitation about it, because *his projet had been entirely approved by the President*, and *after such approval* forwarded by him to Vienna, — with the exception though of the first article. In order to avoid the delay of sending it a second time to Vienna, which would put the ratification beyond the present session of Congress, Mr H. begs leave to suggest, that the convention may be considered alltogether as containing some additional articles to the existing treaty of commerce and navigation, striking out in the projet all that is allready stipulated by that treaty, and putting also the duration of both upon the same terms by confining the independent term of these additional articles to two years, to continue after that in the same way, as the treaty of 1829 has remained in force for all this time, allthough the original term of ten years has expired long ago.
>
> The articles IV et V of the contre projet or originally of mine V et VI are superfluous, because contained word for word in Art. XI of the treaty of 1829.
>
> According to these views Mr H. transmits his own projet corrected in both languages; and will be prepared to conclude finally as soon as it may be convenient for the Hon. Secretary of State.
>
> Mr H. would be glad to be able to transmit the treaty signed by the Washington Steamer, which, he supposes, is to leave New York on saturday week [February 19].

With the foregoing note, Hülsemann returned "his own projet"—that is, the same modified draft which had accompanied his note of January 28—which he had "corrected in both languages"; Hülsemann's proposal was now to regard the convention simply as "containing some additional articles to the existing treaty" (Document 66); so there remained of the articles previously proposed, only six, unscored, and numbered from 1 to 6 as in the convention (these were respectively Articles 3, 2, 4, 7, 8, and 9 of the January 28 draft); the former Article 1 was deleted, as Buchanan had suggested; and Articles 5 and 6 of Hülsemann's earlier drafts (adapted from Articles 5 and 6 of Document 111 and similar to the penultimate and final sentences of Article 11 of the treaty with Austria of 1829) were also dropped; the stated time of duration of the convention (Article 5) was changed from ten years to two; and there were modifications in the title of the convention and in the preamble.

The draft, as modified and then "corrected", shows other alterations, which, perhaps, represent proposals made by Secretary of State Buchanan in his counterproject; there are drafting changes in the preamble and elsewhere which need not be enumerated; in Article 2, the concluding words, "exempt from all duties of detraction" (as in Article 2 of Document 111), are recast so as to read "exempt from any other charges than those which may be imposed in like cases upon

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the inhabitants of the country, from which such proceeds may be withdrawn"; and at the end of Article 7 there is this added sentence, "It is further understood that seamen of the country, in which the desertion shall occur, shall be excepted from these provisions, unless they be naturalised citizens or subjects of the other country", which is not in the signed convention.

Nothing further appears of record regarding the negotiation until April 19, 1848, when Hülsemann transmitted "the treaty ready for signature" and requested the fixing of a day for the "final conclusion". The draft as submitted by Hülsemann with his note of the previous February 8 had been accepted; and the six articles thereof, except for the final sentence, quoted above, of the article regarding consuls, which was omitted from the signed text, became the six articles of the convention.

The result was perhaps not wholly a logical one. The convention contains no reference to taxes on emigration, which was the original subject of the negotiation; Articles 1 and 3 are a restatement, in part, of the provisions of Article 11 of the treaty of 1829 (Document 66); but to those provisions are added, in Articles 2 and 3, clauses regarding realty of a form similar to that found in various other treaties of the United States; and by Article 4 the consular clauses comprising Article 10 of the earlier treaty are elaborated in what was at the time customary wording.

Article 2

In a case involving the title to realty the Court of Appeals of New York, in an opinion written by Judge Cardozo (*Techt* v. *Hughes*, 229 N.Y., 222; 11 A.L.R., 166, June 8, 1920), held that the stipulations of Article 2 governing the tenure of land were not abrogated by the war between the United States and Austria-Hungary which dated from December 7, 1917. Certiorari was denied by the Supreme Court of the United States (254 U.S., 643, October 25, 1920).

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Treaty Series No. 121
9 Statutes at Large, 965–70
16 *ibid.*, 783–88

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GREAT BRITAIN : DECEMBER 15, 1848

Postal Convention, signed at London December 15, 1848. Original in English.
Submitted to the Senate January 5, 1849. (Message of January 4, 1849.) Resolution of advice and consent January 5, 1849. Ratified by the United States January 6, 1849. Ratified by Great Britain January 23, 1849. Ratifications exchanged at London January 26, 1849. Proclaimed February 15, 1849.

The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, being desirous to promote the friendly Relations existing between their respective Citizens and subjects, by placing the communications by Post between the Territories of the United States and those of Her Britannick Majesty upon a more liberal and advantageous footing, have resolved to Conclude a Convention for this purpose, and have named as their Plenipotentiaries, that is to say,

The President of the United States, by and with the advice and consent of the Senate thereof, George Bancroft, a Citizen of the United States, their Envoy Extraordinary and Minister Plenipotentiary to Her Britannick Majesty;—

And Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Henry John Viscount Palmerston, Baron Temple, a Peer of Ireland, a Member of Her Britannic Majesty's most Honorable Privy Council, a Member of Parliament, Knight Grand Cross of the most Honourable Order of the Bath, and Her Britannick Majesty's Principal Secretary of State for Foreign Affairs;—

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

Article I.

There shall be charged upon all letters not exceeding half an Ounce in Weight, conveyed either by United States' or by British Packets between a Port in the United States and a Port in the United King-

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dom, an uniform sea rate of Eight pence, or sixteen cents; and such postage shall belong to the Country by which the Packet conveying the Letters is furnished.

ARTICLE II.

There shall be charged by the Post Office of the United Kingdom upon all letters not exceeding half an ounce in weight, posted in the United Kingdom and forwarded to the United States, or brought from the United States and delivered in the United Kingdom, whether such Letters shall be conveyed by British or by United States' Packets, an inland Postage rate of one penny halfpenny.

There shall be charged by the Post Office of the United States upon all Letters not exceeding half an ounce in weight, posted in the United States and forwarded to the United Kingdom, or brought from the United Kingdom and delivered in the United States, whether such letters shall be conveyed by United States' or by British Packets, an inland Postage rate of five cents.

ARTICLE III.

Upon all letters posted in one country and delivered in the other, these rates of postage, both sea and inland, shall be combined into one rate, of which payment in advance shall be optional in either country. It shall however not be permitted to pay less than the whole combined rate.

ARTICLE IV.

With respect to letters above the weight of half an ounce, each Country shall be at liberty to employ, as regards the collection of the whole combined rate, the scale of progression in operation in its own Territory for charging inland rates of Postage.

ARTICLE V.

The United States engage to grant to the United Kingdom the transit in closed mails, through the territory of the United States, of the Correspondence and Newspapers from the United Kingdom to the British North American Provinces, and from those Provinces to the United Kingdom, at the rate of inland postage to be charged under this Convention for Letters and Newspapers between the United Kingdom and the United States.

A British Officer shall be permitted to accompany the closed Mails during their transit.

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ARTICLE VI.

On the other hand, Her Britannick Majesty engages to grant to the United States the transit in closed Mails through the British North American Provinces, of the Correspondence and Newspapers from one part of the territory of the United States to any other part of the territory of the United States, at rates not exceeding the rates of inland postage now charged or to be hereafter charged in the North American Provinces, according to the distance such closed Mails may be conveyed within the North American Provinces.

An Officer of the United States shall be permitted to accompany the closed Mails during their transit.

ARTICLE VII.

The United States further engage to grant to the United Kingdom the transit in closed mails, through the United States, or through any country where the Post Communication may be under the controul or management of the United States, of Letters and Newspapers forwarded from the United Kingdom, its Colonies or Possessions, to any other British Colony or Possession, or to any foreign Country; and from any foreign Country or British Colony or Possession, to the United Kingdom, its Colonies or Possessions.

ARTICLE VIII.

Her Britannick Majesty engages, on Her part, to grant to the United States the transit in closed mails, through the United Kingdom, or through any country where the Post communication may be under the controul or management of the United Kingdom, of Letters and newspapers forwarded from the United States, their colonies or Possessions, to any other Colony or Possession of the United States, or to any foreign Country; and from any foreign Country, or from any colony or Possession of the United States, to the United States, their Colonies or possessions.

ARTICLE IX.

When Letters shall be forwarded in closed Mails under the stipulations of Articles V. VI. VII, or VIII of the present Convention, the payment to be made to the Post Office of the United Kingdom or of the United States, as the case may be, shall be made by the ounce, according to the net weight of the Letters, at two rates to the ounce, with the addition of twenty five per cent. on the amount of postage, to compensate the loss that would otherwise be sustained by this mode of computation.

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ARTICLE X.

The Country which sends or receives closed mails through the other, is to render an account of the Letters and Newspapers sent or received in such closed mails, and to account to such country for the Postage due thereon.

ARTICLE XI.

Letters posted in the United States, addressed to foreign Countries, and intended to pass in transit through the United Kingdom, shall be delivered to the British Post Office free of all United States' postage, whether Packet or inland, and Letters from foreign Countries addressed to the United States, passing in transit through the United Kingdom, shall be delivered to the United States' Post Office free of all British postage, whether Packet or inland.

In the case of those countries to which Letters cannot be forwarded unless the British postage be paid in advance, such British postage shall be collected in the United States (in addition to the United States' rates of postage) and accounted for to the British Post Office.

In the case of those Countries to which Letters cannot be forwarded unless the United States' postage be paid in advance, such United States' postage shall be collected in the United Kingdom (in addition to the British postage) and accounted for to the United States' Post Office.

ARTICLE XII.

The rate of postage to be taken by the British Post Office upon Letters arriving in the United Kingdom from the United States, either by British or by United States' Packets, and to be forwarded through the United Kingdom to Colonies or Possessions of the United Kingdom or of the United States, or to foreign Countries, and *vice versâ*, shall be the same as the rate which is now or which may hereafter be taken by the British Post Office upon Letters to or from such Colonies or possessions or foreign Countries respectively, when posted at the port of arrival, or delivered at the port of departure of the Packets conveying the Mails between the United Kingdom and the United States.

The above postage is irrespective of and beyond the inland rate to be taken in the United States upon such letters if posted or delivered therein, according to the stipulations of Article II of this Convention; and also irrespective of and beyond the sea rate upon such Letters payable according to the stipulations of Article I.

The rate of postage to be taken by the United States' Post Office upon Letters arriving in the United States, either by British or by

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United States' Packets, from the United Kingdom and to be forwarded through the United States to the Colonies or Possessions of the United States or of the United Kingdom, or to those territories which, according to the Law of the United States, are beyond the limit of their established Post routes, or to foreign Countries, and *vice versâ*, shall be the same as the rate which is now, or which may hereafter be taken by the United States' Post Office upon Letters conveyed, whether by sea or land, to or from such Colonies, possessions, territories, or Foreign Countries respectively, when posted at the Port of arrival or delivered at the Port of departure of the Packets conveying the Mails between the United States and the United Kingdom.

The above postage is irrespective of and beyond the Inland rate to be taken in the United Kingdom upon such letters, if posted or delivered therein, according to the stipulations of Article II of this convention, and also irrespective of, and beyond the sea rate upon such Letters payable according to the stipulations of Article I.

There shall be excepted from the above stipulations Letters and Newspapers passing through the United Kingdom to and from France, as to which certain rates are fixed by the Postal Convention [1] existing between that Country and the United Kingdom; but the two contracting parties agree to invite France to enter into Communication with them without loss of time, in order to effect such arrangements for the conveyance of Letters and Newspapers and closed mails through the territories of the United States, of the United Kingdom, and of France respectively, as may be most conducive to the interests of the three Countries.

ARTICLE XIII.

Letters posted in the United States, addressed to the British North American Provinces, or *vice versâ*, when not conveyed by sea, shall be charged according to the rates of Postage which are now or which shall hereafter be in operation in the United States and in the British North American Provinces for Inland letters.

ARTICLE XIV.

Upon all Letters posted in the United States and addressed to the British North American Provinces, or *vice versâ*, the rates of postage fixed by the preceding Article, shall be combined into one rate, of which

[1] The text, in English and French, of that elaborate convention of ninety articles, dated April 3, 1843, is in British and Foreign State Papers, XXXI, 37–89; there were numerous additional articles of later dates; see *ibid.*, XXXIII, 48–51; XXXIV, 27–30, 32–34; XXXVI, 442–43; XXXIX, 1083–1121, 1152–75, 1225–32; XLI, 15–19.

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payment in advance shall be optional both in the United States and in the British North American Provinces. It shall, however, not be permitted to pay less than the whole rate.

ARTICLE XV.

The rates to be taken on Newspapers published in the United Kingdom, when conveyed between the United Kingdom and the United States, either by British or by United States' Packets, shall be one Penny for each newspaper in the United Kingdom, and two cents in the United States. Conversely, no higher charges than those above stated, shall be made by the British or by the United States' Post Office on Newspapers published in the United States, either when dispatched from that Country, or when delivered in the United Kingdom.

There shall be no accounts between the two Offices for the transmission of Newspapers; each Office shall retain the postage it shall have charged according to the preceding stipulations.

ARTICLE XVI.

The rate of Postage to be charged in the United Kingdom upon Newspapers to and from the United States passing in transit through the United Kingdom, shall be one penny for each Newspaper, except where a lower rate is provided by any Treaty between the United Kingdom and a foreign Country; and the rate of postage to be charged in the United States upon Newspapers to and from the United Kingdom, passing in transit through the United States, shall be two cents for each Newspaper.

ARTICLE XVII.

Periodical works, not of daily publication, posted in the United Kingdom or in the United States, may be forwarded from one Country to the other, either by British or by United States' Packets, by means of the two Offices, under the following conditions, namely:—

1st There shall be no accounts between the two offices for the transmission of such works:—each Office shall retain the postage it shall have charged:—

2dly They must be sent in bands or covers open at the sides or end, so that they may be easily examined.

3rdly They shall be in every respect subject to the conditions prescribed by the Laws and Regulations of both Countries.

The rates to be levied in Great Britain as well on the above mentioned works addressed to the United States, as on those from the United States addressed to Great Britain, shall be as follows:—

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1st For every work not exceeding Two ounces in weight, One penny.

2dly For every work above Two ounces in weight, and not exceeding Three ounces, six pence.

3dly For every work above three ounces in weight, and not exceeding four ounces, Eight pence.

4thly And for every ounce above four, up to sixteen ounces (the limit imposed on the transmission of such articles by the British Office) two pence additional; every fraction of an Ounce being reckoned as a full ounce.

The rates to be levied by the Post Office of the United States on similar works addressed to or coming from the United States, shall not exceed the rates to be charged in the United Kingdom.

ARTICLE XVIII.

Printed pamphlets not exceeding the weight of Eight ounces, posted in the United Kingdom or in the United States, may be forwarded from one Country to the other, either by British or by United State's Packets, by means of the two Offices, at the same rates and under the same conditions as those fixed for periodical works by Article XVII.

ARTICLE XIX.

In consideration of two cents United States' currency not being precisely equivalent to one penny sterling, the British Post Office shall account to the United State's Post Office at the rate of Four Hundred and eighty four cents to the Pound sterling; and the United States' Post Office shall account to the British Post Office at the rate of Four Hundred and Eighty cents to the Pound sterling.

ARTICLE XX.

In case of war between the two Nations, the Mail Packets of the two Offices shall continue their Navigation without impediment or molestation, until six weeks after a notification shall have been made on the part of either of the two Governments, and delivered to the other, that the service is to be discontinued; in which case they shall be permitted to return freely, and under special protection, to their respective Ports.

ARTICLE XXI.

The forms in which the accounts between the respective Post Offices for the transmission and conveyance of Letters, are to be made out, the time and mode in which payment shall be made by either Post Office to the other, together with all other measures of detail

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arising out of the stipulations of the present Convention, shall be settled between the Post Office of the United States and the British Post Office, as soon as possible after the exchange of the Ratifications of the present Convention.

It is also agreed that the measures of detail mentioned in the present Article may be modified by the two Post Offices, whenever, by mutual Consent, those Offices shall have decided that such modification would be beneficial to the Post Office service of the two Countries.

ARTICLE XXII.

The present Convention is Concluded for an indefinite period. It cannot be annulled by either of the two Governments except after the expiration of a year's notice given to the other Government.

ARTICLE XXIII.

The present Convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannick Majesty; and the Ratifications shall be exchanged at London within three Months from the date hereof. It shall come into operation as soon as possible after the exchange of the Ratifications.

In Witness Whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at London the Fifteenth day of December, in the year of our Lord One Thousand Eight Hundred and Forty Eight.

[Seal] GEORGE BANCROFT
[Seal] PALMERSTON

NOTES

Bilateral postal agreements of the United States are ordinarily made as arrangements between the respective Post Office authorities of the two countries.[1] On the part of the United States they are not

[1] There are occasional instances, some recent, of the signature of a postal convention of the United States by an Ambassador or Minister accredited to this Government (e.g., April 30, 1918, 41 Statutes at Large, 1645–55, by the French Ambassador; December 15, 1922, 43 *ibid.*, 1631–39, by the Swiss Minister; October 11, 1929, 46 *ibid.*, 2397–2416, by the Italian Ambassador); but this fact cannot be deemed to affect the character of the agreements in question; see the discussion of Basdevant in "La conclusion et la rédaction des traités et des instruments diplomatiques autre que les traités", Recueil des cours, 1926, V, 535–643, at pp. 625–26, and the authorities there cited. There are also instances of the signature of a postal convention by an American Minister, "acting for and in the name of" the Postmaster General (e.g., March 26, 1910, 37 Statutes at Large, 1490–1503, by the Ambassador to Brazil; August 26, 1910, *ibid.*, 1471–78, by the Minister to Haiti).

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negotiated through officials of the Department of State, but by or under the direction of the Postmaster General, pursuant to statutory authority (act of June 8, 1872, 17 Statutes at Large, 304, sec. 167, now United States Code, title 5, ch. 6, sec. 372; the earliest statute is that of February 20, 1792, 1 Statutes at Large, 232–39). Such postal conventions, as they are generally called, are not submitted to the Senate; while they are approved and ratified by the President,[1] pass under the Great Seal, and are published in the Statutes at Large,[2] they are not proclaimed;[3] and they are not included in the Treaty Series. The original documents are in the archives of the Post Office Department and not in the archives of the Department of State. Postal conventions are not ordinarily included in treaty collections; indeed, there is no general collection of them; the number of postal conventions in the Statutes at Large up to 1935 is nearly 300; they fill some 2,500 pages of those volumes (this count includes the multilateral instruments of the Universal Postal Union; as to those agreements, see Akzin, "Membership in the Universal Postal Union", in American Journal of International Law, XXVII, 651–74).

This postal convention with Great Britain of December 15, 1848, is an exception to the general rule. It was the result of diplomatic negotiations which extended over a period of eighteen months; it was signed on the part of the United States by George Bancroft, Minister at London, and on the part of Great Britain by Viscount Palmerston, Secretary of State for Foreign Affairs; it was submitted to the Senate and received the advice and consent of that body to its ratification; it was duly ratified by the respective Governments, and the ratifications were exchanged in the customary form; thereafter it was duly proclaimed.

There were reasons for this unusual course, which will be examined later.

It may be said here that there are four other instances of postal conventions which were submitted to the Senate; two of them went into force, namely, the convention with New Granada of March 6, 1844 (Document 105), and that with Mexico of December 11, 1861 (12 Statutes at Large, 1205–11; 16 *ibid.*, 1099–1102); two other postal conventions, similarly submitted, failed to go into force, namely, that with Mexico of July 31, 1861 (Treaty Series No. 210; see Executive Journal, XI, 497; that convention was superseded by the convention of December 11, 1861), and that with Costa Rica of June 9, 1862 (D.S., Unperfected O; see Executive Journal, XII, 398).

[1] Requirement of presidential approval first appears, somewhat limited, in section 2 of the act of March 3, 1851 (9 Statutes at Large, 587–91, with which should be read section 2 of another act of the same date, *ibid.*, 637–45; see also section 4 of the act of March 9, 1868, 15 *ibid.*, 40–41); the law reached its present form by section 167 of the act of June 8, 1872 (17 *ibid.*, 283–330).

[2] Early volumes of the Statutes at Large do not include all the postal conventions of the time.

[3] The procedure varied in former years; see 16 Statutes at Large, 833–1123, *passim;* a convention with Belgium of December 21, 1851, was proclaimed after formal exchange of ratifications, though signed by the Postmaster General of the United States "in virtue of his constitutional powers"; see *ibid.*, 899–917.

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The File Papers

The papers in the treaty file are in customary form; they include the original of the convention, the attested resolution of the Senate of January 5, the duplicate United States instrument of ratification of January 6, the British instrument of ratification of January 23, the certificate of the exchange of ratifications of January 26, and the original proclamation of February 15, 1849. The principle of the *alternat* was duly observed, as the ratification on the part of Great Britain shows.

In the Senate the resolution of advice and consent was unanimously adopted on Friday, January 5, 1849, immediately following the receipt of the presidential message of transmittal; there was no reference to committee and no order to print (Executive Journal, VIII, 16–17).

The "explanatory dispatch" transmitted to the Senate with the convention was undoubtedly that of George Bancroft, Minister at London, of December 15, 1848 (D.S., 59 Despatches, Great Britain, No. 108, printed later in these notes); the text of the convention, the despatch mentioned, and two others of earlier date (58 *ibid.*, Nos. 106 and 107, December 12 and 14, 1848), were printed (with the enclosures to No. 107) in the Daily Union of Washington on January 9, 1849, without the knowledge or approval of either the Department of State or the Postmaster General, but owing to the error of an assistant in the office of the latter (D.S., 15 Instructions, Great Britain, 378, January 9, 1849).

All the relevant correspondence at London between the American Minister (and the Secretary of Legation, John Romeyn Brodhead) and Viscount Palmerston (and other British officials) for the period from June 18, 1847, to February 21, 1848, inclusive (except two formal notes of February 4 and 5, 1848, respectively), is printed in Senate Executive Document No. 30, 30th Congress, 1st session, serial 506.

The Double Sea Postage

For many years prior to 1847 the Atlantic mails between the United States and Great Britain had been carried by British packets; since 1840 that service had been under steam and was by the vessels of the Cunard Line; the *Britannia*, the first Cunarder to cross the Atlantic, arrived at Boston on her maiden voyage west on July 19, 1840. The "packet postage" was, of course, collected by the British Post Office; for a letter weighing half an ounce or less, the "packet postage" was one shilling.

American mail steamers were authorized by the act of March 3, 1845 (5 Statutes at Large, 748–50); that statute was the beginning of a new policy; the postage of a letter of half an ounce from Boston to Bremen *via* England was then 43¾ cents; that of a "common newspaper", 61 cents (see House Document No. 162, 29th Congress, 1st session, serial 485). A further statute was that of March 3, 1847 (9 Statutes at Large, 187–88); in his annual message of December 5,

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1848, President Polk stated that there were then seven American mail steamers afloat and that in another year there would be seventeen (Richardson, IV, 652).

The first of the American mail steamers, the *Washington*, sailed from New York for Southampton and Bremen on June 1, 1847.

On June 9, 1847,[1] the British Post Office directed the usual British "packet postage" to be charged on letters and newspapers coming or going in American packets; and it was from the foregoing circumstances that there arose the negotiations which led to this convention.

Representations on the subject were at once made to the British Government by George Bancroft, Minister at London, on his own initiative. His report of the steps taken is in his despatch of June 17, 1847, as follows (D.S., 57 Despatches, Great Britain, No. 28):

I regret to have occasion to report to you an act, on the part of the British Government, which seems to require immediate attention on the part of our own.

On Thursday last, the 10th of this month, I obtained the enclosed copy of a circular issued by command of the Postmaster General, directing the usual British Packet postage to be charged on all letters and newspapers that may come or go in the Packets instituted for the Mail service, by the Post Master General of the United States.

Surprised at the manifest injustice of charging postage on letters brought at the expense of the United States across the Atlantic, as though they had been brought at the expense of the British Government, I repaired immediately to the Foreign Office to inquire the meaning of so unfriendly a procedure. The Secretary was not in the Office, and I saw only the Under-Secretary.[2] He expressed himself wholly uninformed on the subject, but promised to make enquiries at the proper Department, and give me the requisite information on another day.

Returning to the Foreign Office on Saturday the 12th, I again failed of an interview with the Secretary of State; but the Under-Secretary informed me, very frankly, that the charge was imposed "for the protection of the Cunard line of Steamers", through which this government derives a revenue, and he gave me a copy of Mr Peacock's opinion[3] that the charge is authorized by Law. Upon my beginning to discuss the character of the measure, he declined entering upon the subject; referring me, in part, to the Office of the Post Master General, and in part to his chief in the Foreign Department.

On Monday, the 14th I made three several attempts to see Viscount Palmerston, but he was exceedingly occupied during the whole day, and I could not gain an interview.

I was more fortunate at the General Post Office, where I saw the Post Master General.[4] He frankly avowed the object of protecting the Cunard line of Steamers, and the revenue derived from them. He also expressed the Opinion that the imposition of the charge was not imperative, under the law; but rested in the discretion of the Lords of the Treasury. He seemed to see the propriety of a more full postal convention between the United Kingdom and the United States. He promised, (what he promptly performed,) fully to communicate to me copies of the British Post Office Laws and Conventions; and listened readily to all that I had to say of the liberal course adopted by the United States, and the manifest injustice of his imposing a postage for the service which our Government & our Government alone had rendered. He said nothing inconsistent with his adopting immediately and without delay, the course which it seemed to me that justice

[1] The official circular is dated simply June 1847; it could not have issued later than June 9, which is here assumed to be the exact date.

[2] Edward John Stanley, afterwards Baron Eddisbury and later Baron Stanley of Alderley.

[3] A copy of the brief opinion of M. B. Peacock, legal adviser to the Post Office, dated May 13, 1847, is an enclosure to the despatch.

[4] The Marquis of Clanricarde.

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and good policy alike indicated; and he proposed to take the subject for reference to the Treasury Department, and to meet me again at an early day. At my request he named the earliest day possible, which was the 17th.

Accordingly, I went to him, to-day, at two o'clock precisely. I had reason to expect to have met Colonel Maberly[1] with him, for the purpose of discussing the whole subject; but he was alone, and his mind, too, seemed already fully made up. He very frankly repeated that he wished to give protection to the Cunard Steamers; and in the course of conversation remarked that, true, we had as yet but one mail packet, but that if we found it profitable we should go on and build many steam vessels for the service. He seemed to fear that we should compete for the whole business.

I thanked the Marquis of Clanricarde for the frankness of his Communication. "Yes", he replied, "you will always find us frank", and repeated again his intention to protect the Cunard line of Steamers, and to derive for the British Treasury a revenue out of the Mail service of our packets as well as well as of his own.

Upon this, I could not forbear expressing my regret that the principle of the protective system should be revived, on the part of England, under one of its most objectionable forms, and did not conceal from him the unfavorable impression likely to be produced, by this measure, in America.

I then repeated to him the desire of the United States to conduct the postal intercourse between the two countries, on the most liberal principles. I reminded him that the United States made no charge whatever on the letters sent by the British Contract packets. I showed him the advertisements in the American newspapers, where, side by side, the "Britannia" and the "Washington" were announced as each to sail on 1 June, and where the letters by the Britannia were subject to no postage but the usual inland postage, while those by the Washington, alone, were subject in America to the packet postage also. I reminded him that the letters sent by the Cunard line to Canada were charged nothing beyond the lowest ordinary rates of inland postage: I also reminded him that this Exemption from taxation had been generously conceded without stipulating a return, solely from good feeling, after the Cunard line had been established, and while it was in our power to have imposed on it charges at our discretion. I contrasted this liberality on the part of America, with the rule which he had adopted, of levying the Packet postage on all newspapers and letters, whether the British packets carried them or not. I urged him to treat America as America has treated England. I reminded him that the Postal Conventions[2] of England with France, Denmark, and Prussia, divide equitably between the respective States the money received for postage; but that now in the case of America he proposed to levy, in advance, packet postage on all letters sent to America even by American Mail Boats, and keep the whole for the British Treasury. I assured him that the United States would never assent to so unequal an arrangement: that they had shown their disposition by the liberal policy they had adopted: that if instead of being met in the same spirit, they were to be harrassed and taxed by the British Government, they would be driven to the grievous necessity of retaliatory measures—a necessity which I earnestly deprecated.

The British Post Master General still expressed himself desirous of a postal arrangement with the United States, in order to extend the privilege of sending sealed bags to Canada to the route by way of New York, as well as to that by way of Boston; and also to gain liberty to send a mail directly through the United States to the north west parts of Canada; but he held out no ground for our expecting a willing renunciation of the virtually prohibitory tax which he had imposed on letters by the United States' mail packets; and explicitly declined recommending to the Lords of the Treasury the discontinuance of the tax. He esteemed the present arrangement the best for British interests.

Under these circumstances, I shall, before closing this despatch, address a letter on the subject to Viscount Palmerston, as the most proper way of bringing

[1] William Leader Maberly, Secretary of the Post Office; see Dictionary of National Biography, XXXIV, 394–95.

[2] The convention between Great Britain and France has been cited; those with Denmark of June 26, 1846, and with Prussia of October 1, 1846, are respectively printed in British and Foreign State Papers, XXXIV, 15–22 and 34–48.

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it to the serious attention of the British Government. The interests of that Government require, even more than our own, that the postal system between the two countries should not be essentially disturbed; and when it sees the United States are in earnest, it will modify or relinquish its present unreasonable demands. But delays may attend the settlement of the question, and will probably attend it, if on our side there appears any uncertainty as to our insisting upon that reciprocal equality which England concedes to France, and does not with hold from other powers. It would be well that Instructions should be here for the guidance of the person charged with the negotiations.

At the same time (June 18, 1847; D.S., 57 Despatches, Great Britain, No. 28, June 17, 1847, enclosure) Bancroft addressed a note on the subject to Lord Palmerston, British Secretary of State for Foreign Affairs, in these terms:

The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, begs leave to draw the attention of Viscount Palmerston Her Majesty's Principal Secretary of State for Foreign Affairs, to a recent order from the Post Office Department of this Kingdom.

The United States having undertaken by authority of Congress, at the expense of the United States' Treasury, through the Post Master General of the United States, to institute a mail service, and carry a mail between the American Port of New York, and the English port of Southampton, the British Post Master General has issued an order to charge every letter and newspaper thus brought, in addition to the American rates paid for their conveyance across the Atlantic in American Steamers, the full British packet rates that would have been chargeable, if they had been brought by British Steamers.

The Undersigned, inquiring on this subject, first at the Foreign Office, and next at the General Post Office, has been informed that the design of this charge is the protection of the British line of Mail Steamers, and of the revenue derived from that line.

The Undersigned has further understood that the levying of this extra charge is not made obligatory by Act of Parliament, but that a discretion on the subject rests with Her Majesty's Government.

Esteeming the order referred to unequal in itself; specially unequal with regard to the United States; contrary to international comity; contrary to the spirit of existing conventions between the two countries; contrary to the wise policy of existing laws; contrary to the commercial interests of the two countries; and contrary to the interests of the respective British and American Post Office establishments, the Undersigned begs leave earnestly to urge upon Her Majesty's Government the propriety of immediately revoking it; and until a full postal convention shall be entered into, to agree, as America has already agreed, that on letters brought into the respective countries, no charge shall be levied, by either party, but for a service which that party has actually rendered.

The Undersigned is fully persuaded that perseverance in the measure adopted by the British Post Master General, would, by the action of irresistible influences, in the end certainly fail to increase the British revenue from the mail service. But he invites Lord Palmerston's attention to the subject on other grounds.

The measure is objected to by the Undersigned as in itself contrary to equity. For the British Post Office to charge the British Packet postage on letters which British packets have not carried is to reap where it has not sown: to seek to appropriate profits justly due to others. The Atlantic is not a close sea. The right to carry letters between England and the United States does not belong to England exclusively. Yet the British Post Office insists that "if vessels are employed by the Government of the United States to convey Post letters" the British Packet postage "will be chargeable on letters conveyed by such vessels between the United Kingdom and the United States." The first principles of justice imply that the wages are due to those who perform the work; where British packets perform it, to the British revenue—where American packets perform it, to the American revenue.

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The want of equity in the instructions alluded to, becomes the more conspicuous when held in contrast with the conduct of America. The British mails, by the British packets, to Canada and from Canada, are carried by the United States' Post Office Department between Boston and St John's in closed bags and boxes, by an extraordinary and most speedy conveyance, without any other charge than that of the American inland postage between those points. There is no superaddition of ship charges or packet charges, or any other charges; and the inland postage is fixed by the most liberal construction on the part of the United States Post Office department at the very lowest rate of postage. On the letters & papers, brought by the British Post Office line, and distributed from Boston throughout the United States, no other charge is added than that of the usual inland postage. On the first of this month when the British Mail Steamer "Britannia" and the American Mail Steamer "Washington" were to sail on the same day for England, the advertisements of the American Post Office department announced side by side, that on letters by the Britannia the American inland postage only was to be paid, that on letters by the Washington the packet postage also must be previously paid. America made no packet charge on letters sent by the British packet and she believes herself justified in expecting that no packet charge will be made here on letters sent by the American Packet. The American Post Office department limits its charge to the service it renders and it believes itself justified in expecting that the British Post Office department will in like manner limit its charge to the service it renders.

The imposition of British Packet Postage on letters brought by American Government packets appears to the Undersigned contrary to the usual comity of nations. The Undersigned is not aware of any instance where Government packets have passed respectively between two nations, and where one of those nations has claimed to levy the packet postage on both lines for its own exclusive benefit. The Undersigned inclines to the belief that the recent act of the British Post Master General is as little sanctioned by precedent as by natural equity. So entirely did the American Post Office department rely on this comity, that believing that the British Post Office department was fully aware of the establishment of the American line and relying in unhesitating confidence on the disposition on this side the Atlantic to reciprocate the liberal treatment received on the other, the American Postmaster General did not deem it necessary to send an agent in advance. to make a formal notification of his arrangements and his views.

The measure referred to, is at variance with the spirit of the commercial convention of the 3d July 1815 between the United States and Great Britain [Document 35, continued in force by the convention of August 6, 1827, Document 57]. That convention agrees that no charge whatever shall be imposed on the importation or exportation of any article to or from the United States other than such as is payable on the importation or exportation of the same article to or from any other foreign country. It is designed to place the United States on the footing of the most favored nation. It is a violation of the spirit of this agreement that, while France very properly derives exclusively all the pecuniary benefits of its own packet service, the British Post Office should, for the benefit of the British revenue, levy full British packet postage on letters and papers conveyed by the American Government packets.

The order of the British Post Master General is also still more plainly at variance with the spirit of existing laws. The Undersigned applauds the frankness with which it has been avowed to him, what indeed is of itself apparent, that the object of the measure was to protect the line of British packets and the British revenue derived from them. And it must be allowed that the measure, if persevered in, and not met by retaliatory measures on the part of America, is thoroughly well adapted to accomplish its end. The superaddition of the British packet postage to the American packet postage is virtually a discrimination in favor of British packets so onerous as to be actually prohibitory in its character. And this is done at the very time, when a liberal legislation is raising the imports of America from England to an extent without a parallel and while America is indulging the belief that England sees that increase with satisfaction. A protective system which has existed for centuries, may plead its length of years as its excuse for lingering on in a gradual decline; but shall the system of monopoly

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be revived and applied, where it never was applied before? Shall it be applied in a manner at once to inflict an injury on the American Government and to embarrass the intercourse of the American merchants and people with their correspondents in England? The natural consequences of such an attempt at monopoly on the part of the British Government are too obvious to need comment.

Moreover the Undersigned may unhesitatingly believe that Lord Palmerston does not look for the chief benefits of the Post Office system in the mere revenue which it yields. Great Britain has honorably distinguished itself by a most liberal domestic postal system, and not only so, it has led the way in improving the international postal systems of the European continent, and has done this plainly in the primary view to promote commercial, social, and literary and scientific intercourse. No nation has more openly proclaimed by its acts its consciousness that international correspondence sets in motion international commerce. Every mail-bag by every packet from America to England promotes the commercial and manufacturing prosperity of this island. Is it of paramount importance to this Government to embarrass that correspondence in the hope of a most uncertain gain to the Post Office revenue? Why should American correspondence be received less favorably in England than on the continent? Why should any portion of it be resisted and thrown back by a prohibitory tax?

The Undersigned points to the acts of his own Government as leaving no doubt of its readiness to continue and perfect a just and liberal policy in postal arrangements. If it be not continued and improved the Undersigned takes this occasion to say that the failure to establish it reciprocally and all the consequences of such a failure, must be ascribed solely to the reluctance of Her Majesty's Government.

In conclusion the Undersigned renews his request that the United Kingdom would in this affair of their respective mail-packets, treat the United States as the United States treat the United Kingdom; that is to say, that, until a formal postal convention between the two countries is framed, it would charge no more than the usual inland postage on the letters and papers transmitted to and from the United States through the Government packets of the United States.

At a subsequent interview with Palmerston, on June 22, 1847, Bancroft was informed that "the matter was referred to the Treasury" (D.S., 57 Despatches, Great Britain, No. 31, July 2, 1847).

The Instructions

The representations made by Bancroft were "highly approved by the President" in the instruction of July 27, 1847 (D.S., 15 Instructions, Great Britain, 347–48). Thereby Bancroft was furnished with a copy of a letter from the Postmaster General to the Secretary of State giving the instructions from the former to Major Selah R. Hobbie, First Assistant Postmaster General, who was then in London (where he had arrived on July 3, from Bremen) for the purpose of "concluding postal arrangements with the appropriate branch of the British Government"; and the American Minister was directed, in the event that Major Hobbie should leave London without being successful, to act upon the instructions given to him as if they had been directed to Bancroft by the Secretary of State. The text of the letter of the Postmaster General follows (D.S., Miscellaneous Letters, July–September 1847, Cave Johnson to James Buchanan, July 27, 1847):

The despatches of Mr Bancroft, the Minister of the United States at London, dated the 17th of June and the 2nd July, accompanied by his correspondence with Lord Palmerston and the Marquis of Clanricarde, together with the printed instructions No 9 for 1847 of the Postmaster General of the Kingdom of Great Britain, which you did me the honor to hand me for examination a few days since has been carefully considered.

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The Department could not but feel surprise to learn that the Postmaster General of the Kingdom of Great Britain, had in his instructions directed the same rates of postage to be charged on letters forwarded by the American line of mail steamers that is charged for transportation on the Cunard line, which with the rates of postage charged by the United States make them double the amount paid by the British line.

The liberal conduct of the United States in her postal arrangements toward foreign Nations and particularly toward Great Britain had induced the hope that a corresponding spirit would control the authorities of other countries and lead to a more liberal postal intercourse between the different Governments so much required at this time by their social as well as commercial interests

By the act of the 3 March 1825 [4 Statutes at Large, 102–14, sec. 15] "every letter or packet ["] coming into the United States is charged with 6 cents when delivered at the Office where the arrival takes place and if to be conveyed by post to any other place "with two cents added to the ordinary [rates of] postage" of the United States and also provides for the payment of two cents to to the carrier for each letter, except to the commanders of Foreign Packets. This liberal arrangement, making no difference between letters transmitted by American and foreign vessels except two cents to the American Carrier has been continued to the present time.

Upon the establishment by the British Government of the Packet line of Steamers other and more liberal terms were asked by the British Postoffice for letters and packages transmitted by it to their Canadian Colonies and it was readily yielded by this office under the Authority of a Joint Resolution of the two Houses of Congress approved the 15th day of June 1844 [5 *ibid.*, 718–19.]

By this arrangement the English mails to and from her Canadian provinces are received in the offices of the United States without any charge whatever and transmitted by the most rapid mail conveyance through the United States accompanied by an agent of the British Postoffice and delivered to the carriers of the British Postoffice at the ends of the route for the sum of 12½ cents per ounce, a moderate compensation for the expense of transportation.

Still further to enlarge the intercourse between the subjects of her Majesty and the citizens of the United States this Department dispatched the the first Assistant Postmaster General by the steamer Washington on the 1st of June last with ample powers to make postal arrangements with the British and other Governments, to facilitate and increase, as well as diminish the cost of, the intercourse between the United States and other countries.

He will propose to her Majesty's Postmaster General that all letters, newspapers or packets for the Kingdom of Great Britain or its dependencies or from any other part of the world through that Kingdom addressed to persons in the United States or its territories, shall and may be transported in the mails of the United States to the place of destination and charged no higher rates of postage than is imposed upon letters packets and newspapers of the United States for the like transportation and delivery and will expect a corresponding obligation to be entered into by the British Postoffice for the transmission of all letters from the United States to Great Britain and her dependencies, charging no other or higher rates of postage than is imposed upon her Majesty's subjects for similar transportation and delivery and to agree upon such a rate of postage for American newspapers as will be equivalent to the stamp tax imposed upon them in Great Britain in lieu of postage.

He will further propose an arrangement through certain offices in the United States & Great Britain by which letters and packets may be transmitted to the one or other country, with or without pre-payment of postage and an account to be kept and settled quarterly between the offices selected and the balance to be paid to the mail lines performing the transportation

He will further propose a continuance of the existing arrangements with the British Postoffice for sending the English closed mails to her Canadian provinces and will urge the allowance of similar privileges upon similar terms for the transmission of closed mails of the United States to or from Europe, through Great Britain, if from accident or any other cause the Steamers of the United States shall be at any time disabled from the performance of their regular trips in due time

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I cannot but persuade myself that propositions so liberal and just will be acceded to by her Majesty's Postmaster General. If however they shall be rejected for the protection of the Cunard line of Steamers or of the Revenues of the British Postoffice, it must at once put an end to all communications by the American line of Steamers between the two countries and will compel this Department to abolish all existing arrangements between the two Postoffices and refer the whole subject to Congress at its next session for such action as the exigency may require.

From the communication made to Mr Bancroft by the Marquis of Clanricarde, the regulation by which this unjust tax is levied upon letters transported in the American line of Steamers is under the control of the Lords of the Treasury and may be abolished without the delay for an act of Parliament.

It becomes therefore proper, that an annulment of all existing agreements between the two offices be at once made and forwarded to Mr Bancroft for delivery in the event that the first assistant Postmaster General shall not succeed in making the proposed arrangements with the British Postoffice. Accompanying this is a notice to the Marquis Clanricarde, her Majesty's Postmaster General of the annulment of all existing arrangements as prescribed in the seventh article of the agreement [printed below] between the two offices dated the 14th of February 1845, which you will please transmit to Mr Bancroft, to be delivered, whenever the contingency happens requiring it

Another enclosure to the instruction to Bancroft was the notice of abrogation of the then existing postal arrangements between the British and American postal authorities, and specially those which were embodied in the postal convention of February 14, 1845. That notice was to be delivered in the event that the negotiations between the respective postal officials came to no result. This proved to be the case, and the notice was duly delivered on August 16. It ran from the Postmaster General of the United States to the Postmaster General of Great Britain and, pursuant to Article 7 of the agreement of February 14, 1845, declared that that "agreement, as well as all other agreements in existence between the Post Office of Great Britain, or with any of the subordinate offices and the Post Office of the United States, shall be determined and annulled from and after three Calendar months from the delivery of this notice" (D.S., 57 Despatches, Great Britain, No. 40, August 16, 1847, enclosure 2, acknowledgment of the notice of abrogation, dated August 17, 1847). Regarding the delivery of the notice, Bancroft wrote thus (*ibid.*):

Your despatch Nº 15 with the enclosures from Mr Johnson came to hand on the 15th. It is a pleasure to transact business for his department, his instructions are so explicit and his confidence so full. His communications were precisely what was needed. The condition under which the annulment of the existing postal arrangement with Great Britain was to be made, had arrived. Mr Hobbie had exerted himself with ability and assiduity to effect an arrangement; but from causes beyond his control, without success. It was resolved at the British Post Office, if possible, to confine the negociation with him to two points only, vizt, the reciprocal grant of closed mails, and the option as to prepayment, preserving the present unjust discrimination.

Under these circumstances my course was a plain one; to annul the existing partial arrangement, and once more refer the questions involved, directly to the Ministry. I consider it an advantage to be the first to present propositions. To this end I first waited on Lord Palmerston, explained the whole ground to him, suggested to him what he seemed to recognise, the propriety of annulling the existing arrangement, complained a little of the dilatoriness of the British Ministry, and obtained a promise of an early definitive answer. To prevent any misapprehension, on my return, I drafted and sent him the despatch [quoted below] of which I enclose a copy.

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I also repaired to the General Post Office to communicate to Lord Clanricarde the paper from Mr Johnson. The Marquis was absent, but the paper was passed from one to another, till it reached Colonel Maberly, the Chief Executive Assistant. I took care to accompany the delivery of the paper with the remarks,

That in determining and annulling on that day, the 16th of August 1847, the postal arrangements between the United States and Great Britain, the object of the United States was not to withhold any liberal accommodation from the British Government, but only to frame a new arrangement on a basis more suited to present relations, and equal in its terms towards both nations.

It is hardly worth the while to relate the conversation that followed; it is due to Col. Hobbie to say, the interview proved to me that the failure to make a satisfactory arrangement between the Post Office Departments was most certainly no fault of Col. Hobbie's.

Having a fit opportunity I did not fail to call the particular attention of Lord John Russell to this subject of postal arrangements, and obtained from him the promise of giving it his personal consideration. The unfriendly discriminating tax was laid without his having been consulted.

I have also spoken on the subject repeatedly and very fully at the Foreign Office. My confidence in a good issue is unabated. If this Ministry which professes to be liberal, should act otherwise, it is my strong desire to leave the liberality of the American Government evident to the world, that it may be seen that the failure of a good postal arrangement between the two countries is due to the British Government alone.

The Postal Convention of 1845

The postal convention with Great Britain of February 14, 1845, was of limited scope, dealing only with the "closed mails" between Boston and Canada; it was signed in interchanged examples, one by the Postmaster General of the United States (Charles A. Wickliffe) on December 28, 1844, and the other by the Postmaster General of Great Britain (the Earl of Lonsdale) on February 14, 1845; it appears that the text of that convention was not published in either country; no original or copy has been found in the archives of the Post Office Department; the text which follows is from the signed original in the archives of the British Post Office (copy enclosed with despatch No. 512 from London of November 26, 1932, D.S., file 811.71241/33); it will be observed that on the part of the United States the convention was made under special statutory authority (joint resolution of June 15, 1844; 5 Statutes at Large, 718–19), that it was not formally approved or ratified by the President, and that it bore the seal of the Post Office Department:

AN AGREEMENT made, between CHARLES A. WICKLIFFE Post Master General of the UNITED STATES OF AMERICA, under authority conferred by a joint resolution of the Congress of the United States, of the one part; and the Post Master General of her BRITANIC MAJESTY, duly authorized thereunto, of the other part, relative to the transmission of the British mails in their unbroken state or condition between Boston and Canada; by which the following arrangements are entered into and established, to wit:

1. The Post Office Department of the United States is to transport the British mails conveyed to the port of Boston by the British mail steamers plying between Liverpool and Boston and delivered into the Boston post office, from said Boston post office to St. John's in Canada during the season of steam boat navigation on Lake Champlain, and to Highgate, Vt. during the residue of the year; also the British mails from St. John's during the season of navigation aforesaid, and from Highgate the residue of the year, to Boston for dispatch thence to Liverpool by the British mail steamers, to wit: twice per month in the months of April, May,

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June, July, August, September, October and November, and once per month in the months of January, February, March and December in each year.

2. Said mails are to be transported in bulk, in closed bags under the lock or seal of the British Post Office, and with them a mail agent or courier if one be provided by the British Post Office to accompany and take charge of said mails.

3. Said mails are to be conveyed over the most expeditious post route of the United States in operation between the points named, and where there are different routes arranged to the same speed the choice of route for this purpose is to be made by the United States Post Office Department. The contemplated time for this dispatch will be, ordinarily, thirtysix hours between Boston and Burlington, and twelve hours thence when the residue of the trip is performed by steam boat; when by land to Highgate the time required may be five hours longer: Every effort will be made to give the greatest possible speed at all times by dispatching from Boston, on the arrival of the steamer, an extra train, if necessary to connect with the mail steam boat at Burlington, on the evening of the second day after the arrival of the steamer at Boston.

4. The Post Master General of her Britanic Majesty is to pay to the Post Master General of the United States for this service at the following rates, namely: the equivalent of one franc, to wit: 18⁹⁄₁₀ cents per net ounce for all letters or written mails; and the equivalent of five centimes, to wit: 9⁹⁄₁₀ mills for each newspaper, price current, or other sheet of printed matter. Should the rates of postage in the United States be reduced by law, it is agreed that the amount to be paid by the Post Office Department of Great Britain shall be hereafter adjusted so as not to exceed the rates of postage which would be charged on said letters if mailed in the United States, Provided, said reduction shall not bring the aggregate amount below the expense of the transportation.

5. The weight of the letter mails and the number of papers, prices current, and sheets of printed matter is to be certified in each instance by the Postmaster of Liverpool in regard to the mails *for* Canada; and by the Postmaster at Montreal in regard to the mails *from* Canada, to the Postmaster of Boston. In case such report, from accident or other cause, be not made, the Postmaster of Boston will compute the amount of the mails from the gross weight according to the charge per ounce, distinguishing between the newspapers and letters, if practicable: each instance of which will be reported to the British Post Office at London, subject to be corrected by their official returns.

6. The Post Office Department of the United States will transmit to the British Post Office at London, quarterly accounts in the months of April, July, October and January for the services rendered in the quarters preceeding those months respectively. And the Post Master General of the British Post Office will cause said accounts to be paid to the Post Master General of the United States in the succeeding months of May, August, November and February.

7. This Agreement is to go into operation with the first trip to Boston made by the British mail steamers after the execution of these articles by her Britanic Majesty's Post Master General. And it may be determined and annulled at any time by either party, by his written declaration to that effect, made under his seal of office, and transmitted to the other party, — to take effect on the expiration of three calendar months after receipt thereof.

IN WITNESS WHEREOF, these articles are interchanged between the consenting parties, the seal of the Post Office Department of the United States being affixed hereto, and these articles being signed this twenty-eighth day of December, A.D. 1844, by

C. A. Wickliffe.
Post Master General of the United States.

Proposals of the United States

No arrangement having been effected between the postal authorities of the two Governments, Bancroft at once decided, as he wrote in his despatch of August 16, 1847 (quoted above), to "refer the questions involved, directly to the Ministry"; and on the same day, after

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a conference with Lord Palmerston, the following note, containing definite proposals for a reciprocal arrangement, was addressed to him by Bancroft (D.S., 57 Despatches, Great Britain, No. 40, August 16, 1847, enclosure):

The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, begs leave once more to call the attention of Viscount Palmerston, Her Majesty's Principal Secretary of State for Foreign Affairs, to the subject of a postal arrangement between the United States and Great Britain. During the time that the letter of the Undersigned of June the 18th to Lord Palmerston has remained without any answer from Her Majestys Government, the Undersigned has had time to write to his own Government, and to receive answers twice from the other side of the Atlantic.

To make the whole subject entirely easy of arrangement, the Undersigned has this day terminated the partial postal arrangement which heretofore existed, not with the disposition to refuse to the British Government the advantages enjoyed under it, but to renew it on a broader basis having equal reference to both nations.

The communication by letters and papers and packets between the two Continents, is considered by the United States not merely as a source of revenue, but is still more highly prized as the channel through which business is increased, affection cherished, and intelligence communicated between America and Europe.

The Undersigned is therefore instructed to offer on the part of his Government the most liberal reciprocal arrangements. If Great Britain can devise and will offer more liberal reciprocal terms, the Undersigned doubts not his ability to accept them forthwith. Exact equality is the only sine qua non, on which he must insist. If, (which he cannot believe,) Great Britain prefers a policy of impediments, the Undersigned has only to remind the British Government, that in interposing impediments, those impediments, or others warranted by them, will be adopted on the other side of the water.

And that Lord Palmerston may be able to state precisely what the Undersigned esteems as a liberal reciprocal arrangement, (being only most happy if Her Majesty's Government can devise and will propose a more liberal one,) the Undersigned proposes:

The letters and newspapers shall as near as may be come to the receiver of them whether in the United States or in England, in Canada, the West Indies, Mexico, and other parts of America, or on the continent, or other islands of Europe, charged with the same postage, whether brought by the English steamer or by the American steamer across the Atlantic.

Each Post Office may charge on the letters and packets received respectively from the steamers of the other for distribution within its own country, its own inland postage; but shall superadd no Post Office charge, or packet charge or ship charge or any other charge whatsoever.

On newspapers or printed matter so received and distributed the United States shall not charge more than three farthings a newspaper, or a sheet, and Great Britain shall not charge more than one penny, whether distributed in their respective countries or forwarded through them.

For Canada, or for the West Indies and other parts of America for which the United States have mails, letters and packets received from British steamers shall be forwarded by the United States' Post Office with no charge but that which would be charged on similar letters and packets mailed by an American citizen resident at the place of arrival of the British steamer and vice versa. Letters for the Continent or other parts of Europe received from American steamers shall be forwarded with no other charge than the charge on similar letters and packets mailed by a British citizen resident at the port at which the American steamer may arrive.

The United States will forward closed mails from Britain through the United States to Canada, and to the West Indies and other countries in America in so far as the United States have established or shall establish lines to them, and Great Britain shall in like manner forward closed mails from the United States to the continent of Europe, where Great Britain has established or shall establish lines, subject to postage as above, to be adjusted in the usual manner.

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It shall be a constant instruction from each Government to its Post Office department to preserve the most perfect equality in all arrangements, and this being provided for to further in the freest manner postal intercourse between the two countries.

Inasmuch as the United States are from principle opposed to deriving any revenue from the mail service beyond its expenses, the Undersigned is prepared further to agree that it shall be open to either party to propose a reduction of postage, and in the event of the refusal of the other party to agree to such reduction, the party proposing it may proceed to reduce its own packet charges.

If these principles are agreed to by Her Majesty's Government, all details, especially relating to the transmission of letters with or without prepayment of postage and the consequent regulation of accounts, may be left to arrangement between the two departments without further troubling the Lords of the Treasury.

Position of the Two Governments

Besides the Foreign Office, two other Departments of the British Government were concerned: the Treasury [1] and the Post Office. At the time Lord John Russell was Prime Minister and First Lord of the Treasury. Sir Charles Wood (who later became Viscount Halifax) was Chancellor of the Exchequer, Viscount Palmerston was Secretary of State for Foreign Affairs, and the Marquis of Clanricarde was Postmaster General. Throughout the discussions George Bancroft, American Minister, was in communication with the United States Postmaster General, Cave Johnson; and until the latter part of October 1847 Selah R. Hobbie, First Assistant Postmaster General, was in London and participated.

Regarding the double sea postage, that is to say, the charge made by the British Post Office regulation of June 9, 1847, various notes were written on the one part and on the other. Neither Government changed its attitude during the course of those exchanges; the regulation was not withdrawn, and the matter was left to be settled in the proposed new postal convention.

The position taken by the British Government in the matter of the sea postage was stated in the note of Palmerston of August 27, 1847, which is quoted below. In transmitting the note of August 27 with his despatch of September 1, Bancroft said that Lord Palmerston had admitted that the American proposal of August 16 for a postal convention was "very liberal"; and Bancroft added, "The note of Lord Palmerston of the 27th August, is no expression of the views of this Government. It is merely the apology of the Post Office for its unfriendly course" (D.S., 57 Despatches, Great Britain, No. 43). Lord John Russell had previously told Bancroft (*ibid.*, No. 40, August 16, 1847) that the "unfriendly discriminating tax was laid without his having been consulted"; and in a "long interview" on August 18, when Bancroft gave to Russell a copy of the American note of August 16, Russell "approved of the principles laid down . . . , was sensible

[1] The office of Lord High Treasurer has been in commission since 1714, its functions being entrusted to a board comprising a first lord, a chancellor, and various junior lords; the office of First Lord of the Treasury (which since 1783 has usually been held by the Prime Minister) has now, in itself, duties hardly more than nominal; the responsible finance minister is the Chancellor of the Exchequer, who is named second in the patent of appointment.

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that no fit solution of the question was to be expected from the London Post Office Department, and promised as one of the Lords of the Treasury, himself to give immediate attention to the subject" (*ibid.*, No. 41, August 18, 1847). It was obvious that the views of the various British Departments were not wholly concordant. The note of Palmerston of August 27 reads as follows:

The Undersigned, Her Majesty's Principal Secretary of State for Foreign Affairs, has the honor to inform Mr Bancroft Envoy Extraordinary and Minister Plenipotentiary of the United States of America at this Court, that he has received from the proper Department of Her Majesty's Government a letter which enables him to answer the note addressed to him by Mr Bancroft of the 18th of June last, on the subject of an Order which had been issued by the General Post Office stating that Letters and Newspapers either brought to England from the United States or despatched from England to the United States by way of Southampton, in the steam vessels employed by the Government of the United States to carry mails between New York and Southampton, are liable to be charged with the full amount of the British Packet rates of Postage which would be chargeable thereon if such letters were conveyed by British Packets.

The Undersigned now begs leave to explain that the Post Office order above referred to, did not introduce any new Rate of Postage specially imposed to meet the particular case of the employment of American steam vessels to carry mails between New York and Southampton. But the object of the notice so issued by Her Majesty's Post Master General was to inform the Postmasters throughout the Kingdom that the American vessels in question were *Packets*, and that the Rates of Packet Postage, and not the ordinary Rates of Ship Letter Postage ought therefore to be charged upon Letters conveyed by those Packets.

The Undersigned begs also to state that the levying of this charge is not a new measure, but is made simply in fulfilment of the ordinary Law applicable to such cases; For the Act of the 3d and 4th Victoria: Cap. 96 expressly declares that all Letters not weighing more than half an ounce which shall be transmitted by the Post between the United Kingdom and the United States of North America shall be chargeable with an uniform rate of one shilling; and the 71st Section of the same Act provides that the expression "by the Post" shall be understood as including the Transmission of Post Letters by Packet Boats. The Undersigned would beg also to explain that the United States is not the only country to which the abovementioned act has been applied but that, on the contrary, the Regulation by which Packet Postage is charged upon Letters and Newspapers conveyed by Foreign Packets has been invariably acted upon in regard to Letters conveyed by the Mail Packets of all Foreign Countries: The last occasion on which this Regulation was so applied happened in 1844, when the Belgian Government having established Packets to run twice a week between Dover and Ostend, Letters conveyed by those Packets were ordered to be charged with precisely the same Rates of Postage which are chargeable on Letters conveyed by British Mail Packets.

But Mr Bancroft conceives that Letters conveyed by the American Packets ought to be charged in this country with the Inland Rates of Postage only; and he states that when the American Post Office Department established those Packets they felt no doubt that the Letters carried by those Packets would be so dealt with.

But the Undersigned begs to remark that the Post Master General of the United States in a Memorandum which he transmitted on the 26th December last to the British Minister at Washington, with reference to a proposed arrangement for the conveyance of mails between New York and Montreal, said that "the Post-"master General of the United States is desirous that a mutual arrangement be "made between the two Governments that will dispense with the charge of Ship "Postage on the Letters brought into the respective Countries by the mail lines "of each; that is, that such Postage shall not be charged in the United States "on Letters brought into them by the Cunard line of Steamers, and that it shall "not be charged in Great Britain on Letters taken into it by the mail steamers in

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"the employment of the Government of the United States"; and the Undersigned would observe that this passage seems to show that the United States' Post Office was at that time aware that under the existing Regulations of the British Post Office, Letters brought to the United Kingdom by American Packets would be chargeable with Postage for sea conveyance, or what the Postmaster General of the United States calls "Ship Postage", in addition to Inland Postage.

Mr Bancroft further remarks that the Government of the United States charges only the Inland Rate of Postage on the British closed mails to and from Canada, but the Undersigned would beg to observe that the transit Rate which is paid by agreement for this correspondence was fixed without any regard to the Inland Rates of Postage charged in the United States on Letters conveyed to and from Canada; For Mr Wickliffe then Postmaster General of the United States, with whom the agreement was concluded, stated that the terms which he demanded were founded upon the arrangement made between Great Britain and France for the conveyance of the Indian mails through the French Territory.

It is indeed true that one of the articles of the Agreement respecting the Canada Postage provided that if the Rates of Postage in the United States should be reduced by Law, the Payment stipulated to be made by Great Britain should be adjusted so as not to exceed the Rates of Postage which would be charged upon the Letters if they were posted in the United States; But this provision was qualified by a Clause stipulating on the part of the United States, that no reduction of this Rate of Postage should be made which would bring down the aggregate amount paid by Great Britain so as to make it less than the cost of conveyance; and Her Majesty's Government have lately received an account from the United States' Post-Office in which the Transit Rate to be paid for the Canadian closed mails is reduced to the amount of the Inland Rate charged in the United States for the distance over which those mails are carried, with an addition of Twenty five per cent to cover the loss supposed to be sustained by the United States' Post-Office in consequence of the Letters being weighed in bulk instead of singly.

Mr Bancroft also states that upon the Letters and Papers brought by the British Post-Office Steamers and distributed from Boston throughout the United States, no other charge is made than that of the usual Inland Postage. But it would appear that Mr Bancroft has not been correctly informed upon this point, because a charge for Ship Letter postage is made upon every Letter contained in the British Mails, the amount being six cents for each Letter delivered in Boston, and two cents for each Letter delivered in any other part of the United States, the charge in the latter case being of course added to the Inland Postage.

The Undersigned begs leave in conclusion to assure Mr Bancroft that Her Majesty's Government so far from being disposed to deal illiberally with the United States in this matter, have on the contrary favored that country with regard to the Postage charged upon its correspondence. For, in 1839 when Her Majesty's Government reduced the Packet Postage on Letters to and from the British American Provinces from 2/2^{d} to 1/— (in which latter sum was included all charge for Inland conveyance within the United Kingdom) that reduction of Postage was extended to Letters conveyed to and from the United States; and although Her Majesty's Government do not usually grant such advantages to Foreign Countries without requiring reciprocal reductions in favor of Great Britain, no such demand was on that occasion addressed to the United States: and this reduction took place some time before the general reduction of Postage on the British colonial correspondence.

The Undersigned takes this opportunity of informing Mr Bancroft that he has had the honor to receive, and that he has referred to the proper Department of Her Majesty's Government, Mr Bancroft's note of the 16th of August, stating the terms upon which he has been authorized by his Government to propose that Great Britain and the United States should conclude an arrangement for the transmission of mails between the two countries.

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The foregoing note was thus answered by Bancroft on August 31 (D.S., 57 Despatches, Great Britain, No. 43, September 1, 1847, enclosure 2):

The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, having received from Viscount Palmerston Her Majesty's Principal Secretary of State for Foreign Affairs, a note, dated the 27th instant, in reply to the letter of the Undersigned of the 18th of June last, complaining of the double postage imposed on letters brought to England in American Packets, the Undersigned desired a conference with Lord Palmerston, in the hope of effecting an immediate practical result.

Having, this day, had such conference, and Lord Palmerston having informed the Undersigned of the necessity Lord Palmerston is under of consulting another Department of Government before giving a reply, and having invited the Undersigned to reduce what he had to say to writing, he seizes the earliest moment to do so.

On the 12th of July last, the Undersigned announced to Lord Palmerston that Mr Hobbie, the First Assistant Post Master General of the United States being in London, the Undersigned was prepared to assist in making a postal arrangement between America and the United Kingdom. On the 16th of this month the Undersigned communicated to Lord Palmerston the terms which he is authorized by the American Government to propose. These terms Lord Palmerston has now under consideration: the delay in proceeding with the negotiation has not rested with the Undersigned.

Pending the negotiation, the Undersigned proposes that Her Majesty's Government should suspend the action of the Post Office Order No 9, of June 1847, imposing double postage on letters brought by American Packets; in which case, the Undersigned will undertake, in return, that pending the negotiation, the United States will omit the retaliatory measure of double postage on English and Canadian letters, which otherwise must take place. Lord Palmerston was pleased to say that Great Britain would have no ground to complain of such retaliatory measures; but the Undersigned will certainly complain greatly if circumstances beyond his controul put upon him the most irksome necessity of recommending them.

The Undersigned having thus found himself obliged to make this further communication on the subject of Postal arrangements, is constrained to repeat what he had the honor to say to Lord Palmerston, that the explanations contained in Lord Palmerston's note of the 27th instant will be far from reconciling the Government and People of the United States to the British imposition of double postage on letters conveyed in American Packets.

Lord Palmerston refers to the Act of the 3d and 4th Victoria, Cap: 96, as the authority for the double charge. But it is agreed that a discretion rests with the Treasury Board in the application of that authority: and, indeed, the United States, of all nations in the world, are now alone singled out to suffer from the imposition of double postage.

Lord Palmerston it is true, remarks that this regulation was applied to the Belgian Packets in 1844. But it could have been only as an experiment; and for an exceedingly short period. The experiment must at once have failed: for Belgian and English Packets ply, and have long plied indiscriminately between Dover and Ostend, and the postage in England for receiving or transmitting a letter is no higher by the Belgian than by the English Steamer. The precedent of Belgium is then against the imposition of the double charge.

Lord Palmerston appears to think that the Post Master General of the United States must have been prepared for the imposition of double postage, because he proposes there should be no charge of Ship postage, at all, in Either Country. The Undersigned cannot see why Mr Johnson should have expected his fair and candid proposition should have been summarily dismissed. The Undersigned had till now supposed Mr Johnson's offer could not have come to the knowledge of the British Government. The Undersigned cannot but express surprise, that so fair and candid a proposition, conveyed through the estimable British Minister at Washington, should have had for its answer a Post Office Order imposing double postage, without any notification to the American Government whatever.

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But surprise becomes still greater when Lord Palmerston seeks to invalidate the allusion of the Undersigned to the indisputable fact, that on the British closed mails to and from Canada, the United States charge only inland postage. Lord Palmerston's argument is, that the transit rate was fixed without any regard to the inland rates of postage in the United States. Lord Palmerston can have been but partially informed on this subject. The people of the United States taking into consideration their established rates of postage, and desirous to manifest their disposition to live in special good neighborhood with England, and thinking their high rates of postage might be an obstacle to intercourse across their territory, freely and purposely authorized Mr Wickliffe, then the Post Master General, to adopt a lower transit rate for England than was paid by Americans themselves. But the People of the United States did not foresee that Lord Palmerston would make this discrimination of the United States in favor of letters transmitted from British Packets through America, a reason for the imposition of double postage on letters transmitted from American Packets through England.

But as the contract referred to provided for a still further reduction of the transit rates, if a general reduction of the American rates should make the regular postage less than the rates fixed in the Agreement with England, Lord Palmerston next finds in the contract reference to the American inland rates of postage; but finds also the provision qualified by a clause stipulating indemnity to the United States against loss. The answer is plain: the contract was so qualified only because Her Majesty's Government first qualified it by stipulating for extraordinary means of conveyance, at uncertain times, and at extraordinary speed.

Lord Palmerston is quite right in supposing the Undersigned not to have been correctly informed as to the charge of two cents on letters brought into the United States by Ships from abroad. It is true that by the Act of Congress of 3^d^ March 1825 [4 Statutes at Large, 102–14], two cents on each of such letters are exacted; but the law had its motive not in the interest of the public Treasury, but in the desire to promote intercourse with all nations. The little pittance of Ship money thus collected is paid to the Ship master, if not a public officer. The United States' Government is not at liberty to pay the public officers of other countries, and is entitled to the service of its own. If this little charge, so small in amount as to be almost imperceptible, less, per cent, in amount, than the extreme variation in the legal valuation of the Pound Sterling in the United States, continues to be charged on some part, and some part only, of letters brought by the Cunard line, it is only because Her Majesty's Government has not given attention to the repeatedly expressed wish of America to abolish it.

Lord Palmerston finally urges, as evidence of British liberality, that Great Britain did America the *favor* to reduce postage on American letters from 2^s^/2 to 1^s^/—for America as well as for the British Provinces. Great Britain at great cost long supported a Colonial mail. At length it reduced the postage; improved the mail service; extended it to the United States; and the mails increased perhaps more than a hundred fold; so that what had been an excessive burthen on the British Treasury, became a remunerating business. The Undersigned rejoices that it proved so. Every one must feel satisfaction at this result. But why should this system be spoken of as one of privileges and *favors*? It is rather the testimony of experience against the system of privilege, protection, and *favor*, and in support of liberal reciprocity and the offices of good neighborhood.

The Undersigned renews the proposition that pending the negotiation for a postal arrangement Her Majesty's Government should suspend the exaction of double postage on letters conveyed by American Packets; the Undersigned offering, in return, that the United States will, in that case, pending the negotiation, forego the retaliatory measures which Lord Palmerston has very candidly observed it would be the perfect right of America to adopt without giving any cause of complaint to this Government, with which the Undersigned is instructed to cultivate the most friendly relations.

Further exchanges, elaborating the respective positions of the two Governments, were the formal protest of Bancroft in his note of October 22 (D.S., 57 Despatches, Great Britain, No. 50, October 23,

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1847, enclosure 4) and the reply of Palmerston thereto of December 21 (*ibid.*, No. 56, December 29, 1847, enclosure).

Further Negotiations

Discussions, both oral and written, of the terms of a postal convention were resumed in September and October 1847 and again in February 1848; the chief negotiators were, for Great Britain, the Postmaster General and, for the United States, the American Minister; but the Chancellor of the Exchequer also took part and so did the First Assistant Postmaster General of the United States during the time preceding his return to the United States (October 24, 1847); there were detailed proposals and counterproposals, which are fully reported in the despatches of Bancroft for the period in question (D.S., 57 and 58 Despatches, Great Britain, *passim*).

As has been seen, the double charge of sea postage was not really favored either by the First Lord of the Treasury or by the Secretary of State for Foreign Affairs; and in the negotiations regarding the terms of a postal convention it was not questioned that the sea postage, as such, should be single and not double, and collected by the Government whose packets rendered the service; but on another point, closely connected with the sea postage proper, the negotiations for the time being failed; and some explanation of the postal arrangements of that time, much more complex than those now prevailing, is essential. For simplicity, the rates will all be stated in American money, at 2 cents to the penny; only the letter postage will be considered, and minor points that arose will be omitted from the narrative.

The basic unit of weight for letters was then the half ounce; the carriage of letters from England to America or *vice versa* was considered to be a threefold service, the rate for which involved three charges. Those three charges were (*a*) the postage in the country of origin, for delivery to the packet; (*b*) the sea postage; and (*c*) the postage in the country of receipt, for delivery from the packet. Various figures of the total rate were proposed; but only one of them need be mentioned in order to show the points of divergence; that was a total rate of 30 cents, of which 24 cents was the sea postage and 6 cents the aggregate of the two inland rates.

In such case the British Post Office proposed that, while the sea postage would go in its entirety to the country whose packet performed the service, the aggregate of the inland rates should be equally divided, so that each country would get 3 cents. To this last Bancroft objected; and it was on this point of the inland rates that the negotiators failed to reach early agreement.

The ground of Bancroft's objection was the difference between the domestic letter rates at the time in force in the two countries. In England the rate was 2 cents (penny postage; on letters not prepaid, the rate was 2 pence); in the United States it was 2 cents for delivery from the office of receipt ("drop letters"), 5 cents for transmission to points within three hundred miles, and 10 cents to points beyond that distance. (These were the United States rates within "estab-

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lished Post routes"; see Article 12, paragraph 3; they did not extend, for example, throughout the far west.) Bancroft pointed out that the equal division of such a rate meant that the British Post Office would get 3 cents for a service which it was performing otherwise for 2 cents, and that the United States Post Office would get 3 cents for a service for which it was otherwise charging (in general) 5 cents or 10 cents. He argued that the enormous distances in America required a difference in this regard, that the penny postage in Great Britain produced a revenue, whereas the rates in America made a charge on the Treasury, and that a rate of 3 cents for a letter from New Orleans to Boston was wholly unreasonable. Bancroft's proposal was that each country should regulate and collect its own inland postage, with the condition of equal rates for letters carried by the packets of both.

An alternative proposal made by Bancroft, however, was to divide the 30 cents into a sea rate of 18 cents and two inland rates of 6 cents each. To this, by itself, the British Post Office was willing to assent; but not to the condition coupled with it. That condition was that that rate should be extended to transit mail; the transit mail meant, for example, the Atlantic mail going from Boston or New York to Canada, or from Liverpool through England to the Continent.

The only result of the discussions between Bancroft and Clanricarde was disagreement; Bancroft wrote in his despatch of February 25, 1848, as follows (D.S., 58 Despatches, Great Britain, No. 63):

> The British Post Master General has positively refused to form any Postal Treaty with the United States, except on the basis of "the uniform and equally divided inland rate". If the United States were to agree to that, he would argue that that inland rate should be the sole transit rate to Canada, and would still insist on exacting the present transit rates through England to the Continent.

The positions of the two negotiators were respectively stated in their notes of February 10 and 11, the texts of which follow (*ibid.*, No. 61, enclosures 8 and 9):

[*The Marquis of Clanricarde to Mr. Bancroft*]

G.P.O. *Feby 10. 1848.*

Dear Sir, I have considered, and have conferred with the Chancellor of the Exchequer upon the counter-propositions transmitted to you by the Postmaster General of the United States [Cave Johnson], in reply to those we had the honour to submit to you, and particularly upon that which is referred to in the extract from Mr Cave Johnson's letter which you have been so good as to send me.

To that proposition, vizt, that letters sent from one country should be treated, upon their arrival in the other, upon precisely the same terms as the inland letters of the latter country, we cannot agree. We should thereby gain, upon making the alteration in our Law which you desire, nothing for the advantage of the Commercial world, or the publick of the two countries.

Great Britain established regular and steam packets for the correspondence across the Atlantick at considerable risk and at great Expense. In 1839 we lowered the rates of Postage between England and America voluntarily; and the Law you wish to change was passed with the approbation of the American, quite as much as of the British publick. We are ready to change that Law in order to gain increased facilities for the correspondence of the two countries.

But we think it essential, in making any change, to secure for the publick optional prepayment, and a reduced and uniform rate of Postage.

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As the proposition to which I refer is the most important of any, I need not now advert to the others you mentioned to me.

The Chancellor of the Exchequer and myself had hoped that the mode by which we proposed to attain the objects to which I have alluded, would have been as well received at Washington as we flattered ourselves it was by you; and that we might easily have agreed upon the remaining points for a Convention, which in such case might have been concluded without further delay than that which official forms would have required. But, as there appears to be a reluctance upon the part of the Government of the United States to accept our propositions, it will be necessary for me to place them upon record by transmitting them in the usual form through the Treasury to the Foreign Office. And I cannot abandon the hope, that, upon reconsideration, Mr Cave Johnson will advise the acceptance of a proposal which is calculated to confer upon the Commercial world on both sides of the Atlantick great and permanent advantages.

I remain, my dear Sir your very faithful and obedient servant

(signed) CLANRICARDE

Honble GEO. BANCROFT,
&c &c &c

[*Mr. Bancroft to the Marquis of Clanricarde*]

90 EATON SQUARE, *11 February, 1848.*

MY LORD, The interview to which your Lordship invited me on Monday last [February 7, 1848], did not prepare me for the abrupt termination of our direct negotiation, as announced to me in your note which I received late last night, and in which your Lordship refuses the principle of reciprocity as the basis of a Postal convention with the United States.

You decline the proposition that letters sent from one country should be treated upon their arrival in the other, upon precisely the same terms as the inland letters of the latter Country, and at the same time you insist on maintaining your own present high rates of Postage on transit letters taken across the channel. That is to say: you decline a Postal arrangement with the United States, unless where British Postage is low you may raise it on American Correspondence; and where British Postage is very high, you may retain it as it is; and you further claim that British Correspondence shall be carried from Boston to Austin or Jefferson City; or Astoria,—from one end of a Continent to the other—at the same rate at which you carry letters through the limited and densely peopled regions of Great Britain and Ireland.

This creates surprise. Still more am I surprised at your Lordship's assigning as a reason for your refusal to agree to Mr Johnson's proposition, that by acceding to it nothing would be gained for the advantage of the commercial world. Now, in point of fact, Mr Johnson's proposition as conveyed by me to your Lordship doubles the opportunities of correspondence, and reduces the rate of postage twenty per cent, or even thirty three and one third per cent. At the same time it offers no insurmountable obstacle to the system of optional prepayment.

I will add that my desire to promote the comfort and interest of the commercial world and the public of the two countries, is the leading, not to say the sole motive of my urging this negotiation to an immediate settlement. The interests of the American Post Office revenue I regard as subordinate.

You allude to the fact that Great Britain was the first to establish regular Packets; as though that circumstance should give Great Britain an advantage in the negotiation. The British Packet service between America and Great Britain is as old as the importance of the British American Colonies. It goes far back into the last century, and perhaps farther; and used to be a very heavy burthen on the British Treasury. A few years ago you improved the service and defrayed the expenses of it out of the United States' correspondence, of which the United States permitted you to be the sole carriers. We now intend to be joint carriers. By the custom of Nations, which forms international Law, by the municipal Laws of England and of the United States, and by the Consti-

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tution of the United States, the Postal service is a function of Government. Between independent nations it can have no foundation but reciprocity.

You are quite right as to my views when you refer to my desire to establish a reduced and uniform rate of Postage between America and Great Britain, coupled, you will keep in mind, with such a reduction of the Transit Rates of Postage as should make England the channel of Communication with the European Continent. From Boston to St John's, from New York to the Canadian line, is as far as from Southampton to Ostend, or from Liverpool to Havre or Boulogne. I endeavored with all the earnestness in my power, to persuade you to make England the great medium of communication between America and the European Continent. I pointed out to you a double advantage to Great Britain from adopting such a course: I., to English Trade; for if England is the regular channel through which American correspondence with the Continent passes, more of it, and consequently more of American Commerce will remain in England; and II., to the British Post Office revenue; for it is plain that to share in carrying the correspondence of America to the European Continent would largely increase that revenue.

These arguments, and the proposition founded on them, on my part, of a reduced and uniform rate of Postage, you rejected. I abandon therefore, as I told you on Monday, all attempts to induce you to reduce your Transit Rates, and I leave the subject to your own laws and your own views of your own interest. In like manner, I invite you to leave the American Government to fix its own inland rates, according to the nature of its widely-extended, thinly-peopled country, with its roads, new, or unfinished, or primitive, and sometimes all but impassable; with its inland seas which are several times wider than the British Channel; with its Rivers which are mail routes and which from source to mouth are longer than the distance from Liverpool to Boston. We have fixed those inland Rates on liberal terms, and are now preparing to reduce them. Let the reduction be left to the judgment and liberality of the American People. Do you also, on your part, establish your own inland rates, according to the system which perfect roads and a limited and every where densely-peopled territory incline you to establish.

To the Postal Communication between England and America, there are three parts: the inland British service: the inland American service: and the sea service. The service on the sea is identically the same for both parties: the respective inland service is widely different.

I repeat to your Lordship this offer.

Let Great Britain establish its own inland Rates and transit rates as it will, making them the same for correspondence by British or American Packets. Let America establish its own inland rates and transit rates as it will, making them the same for correspondence by American or British Packets. Let there be one uniform sea-rate of seven pence, or any sum you may prefer, not much exceeding seven pence, with option of prepayment.

As you name the Chancellor of the Exchequer in your note, be good enough to acquaint him with this my reply, which I intend as official. There is no need of referring this subject back again to the United States. My powers are full; and if you please, I shall myself be glad to receive and to consider your reply.

I remain, my Lord, very faithfully, your obedient humble servant,

(signed) GEORGE BANCROFT

The MARQUIS OF CLANRICARDE,
&c &c &c

The argument was continued and amplified in notes written a few days later (D.S., 58 Despatches, Great Britain, No. 63, February 25, 1848, enclosures 1, 2, and 3, Clanricarde to Bancroft, February 14 and 18, and the latter to the former, February 15, 1848); in the latest of those three communications this was the final paragraph:

If, therefore, it is not within your power to renew our negotiations by an acceptance of the uniform, and equally-divided inland rate, and of the Packet Rate to be equally levied and equitably paid,—which we have proposed—I have

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no alternative but to transmit in official form through the Treasury and the Foreign Office, the offer we have made, and by which we must advise Her Majesty's Government to abide.

The Final Negotiations

In the meantime President Polk had called the matter to the attention of Congress in his annual message of December 7, 1847, in which he wrote (Richardson, IV, 562–63):

> The first of the American mail steamers authorized by the act of the 3d of March, 1845, was completed and entered upon the service on the 1st of June last, and is now on her third voyage to Bremen and other intermediate ports. The other vessels authorized under the provisions of that act are in course of construction, and will be put upon the line as soon as completed. Contracts have also been made for the transportation of the mail in a steamer from Charleston to Havana.
>
> A reciprocal and satisfactory postal arrangement[1] has been made by the Postmaster-General with the authorities of Bremen, and no difficulty is apprehended in making similar arrangements with all other powers with which we may have communications by mail steamers, except with Great Britain.
>
> On the arrival of the first of the American steamers bound to Bremen at Southampton, in the month of June last, the British post-office directed the collection of discriminating postages on all letters and other mailable matter which she took out to Great Britain or which went into the British post-office on their way to France and other parts of Europe. The effect of the order of the British post-office is to subject all letters and other matter transported by American steamers to double postage, one postage having been previously paid on them to the United States, while letters transported in British steamers are subject to pay but a single postage. This measure was adopted with the avowed object of protecting the British line of mail steamers now running between Boston and Liverpool, and if permitted to continue must speedily put an end to the transportation of all letters and other matter by American steamers and give to British steamers a monopoly of the business. A just and fair reciprocity is all that we desire, and on this we must insist. By our laws no such discrimination is made against British steamers bringing letters into our ports, but all letters arriving in the United States are subject to the same rate of postage, whether brought in British or American vessels. I refer you to the report[2] of the Postmaster-General for a full statement of the facts of the case and of the steps taken by him to correct this inequality. He has exerted all the power conferred upon him by the existing laws.
>
> The minister of the United States at London has brought the subject to the attention of the British Government, and is now engaged in negotiations for the purpose of adjusting reciprocal postal arrangements which shall be equally just to both countries. Should he fail in concluding such arrangements, and should Great Britain insist on enforcing the unequal and unjust measure she has adopted, it will become necessary to confer additional powers on the Postmaster-General in order to enable him to meet the emergency and to put our own steamers on an equal footing with British steamers engaged in transporting the mails between the two countries, and I recommend that such powers be conferred.

Under date of February 10, 1848 (D.S., 58 Despatches, Great Britain, No. 61), Bancroft wrote that "The passage in the President's message respecting our Postal relations here, the annual Report of the American Post Master General, and the publication of the Protest in England attracted public attention to the subject. The commercial

[1] For this arrangement of 1847 with Bremen, see Senate Executive Document No. 25, 30th Congress, 2d session, serial 531.

[2] For the relevant portion of this report, see Senate Executive Document No. 1, 30th Congress, 1st session, serial 503, pp. 1324–27.

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men of Liverpool, of Manchester, and of Glasgow, have expressed a desire to see the question promptly settled".

Upon the failure of the discussions with Clanricarde, Bancroft shifted the negotiations to the Foreign Office by a note to Palmerston of February 21, in which he called attention to the fact that his proposal of August 16, 1847 (quoted above), for a postal convention, had not received an answer; with this note he enclosed the following memorandum, to be taken into consideration with the earlier proposition (*ibid.*, No. 63, February 25, 1848, enclosure 4):

Memorandum: To be considered in connection with Mr Bancroft's Note to Viscount Palmerston of 16 August, 1847.

The American Government in a Postal Arrangement with Her Majesty's Government, desires the greatest facilities for correspondence between the two Countries; seeks to diminish rather than increase the present rates of postage; and offers principles of perfect reciprocity as the basis of an arrangement.

The service requires inland carriage in America; sea conveyance; and inland carriage in the British Isles.

The sea conveyance is the same for both. The inland carriage differs in distance; and, from difference in density of population, in cost, and in productiveness. The distance from Liverpool to the remotest point in the British Isles, is but a few hundred miles. From Boston to Mobile, New Orleans, Galveston, and Austin, is further by the Mail routes, than from London to Constantinople, Smyrna, and Cairo. Many Post Offices in the United States are as far asunder as the whole breadth of the Atlantic. The river course from Pittsburg to New Orleans, which is but a part of one of the great thoroughfares between the North and New Orleans, is a Mail route, thronged with Mail Boats every day; and the distance is greater than the distance from Halifax to the United Kingdom. The regular Mail route from Boston to New Orleans uses steam boats twice or three times, and each time for a distance many times greater than the distance across the British Channel. The line from Boston or New York to St John's passes over Lake Champlain for a distance greater than the distance between England and France, or England and Belgium. A postage in America of two cents, of five cents, or of ten cents, according to distance, leaves the Post Office still a burthen on the Treasury. Her Majesty's Government is fully aware of these things; it has introduced the penny postage in Great Britain, but not in Canada.

It is therefore proposed by the American Government:

First, that Each Country shall establish its own inland rates; and letters sent from one Country shall be received and treated in the offices of the other as letters originating in the latter Country.

There shall in addition to such inland rates, be one uniform sea-rate, of which the British Government may fix the amount. The American Government would prefer the rates as follows:—

On single letters under half an ounce, one uniform sea rate of seven pence half penny, or fifteen cents:

On newspapers, periodicals, and pamphlets, one uniform rate of one half-penny the printed sheet or ounce: but, Editors and publishers of newspapers might exchange papers free of postage.

N.B. As two cents are a very little less than a penny, if America collects at two cents the penny, and England in Sterling Money, England should account to America at 484 cents the Pound Sterling, and America to England at 480 cents the Pound Sterling; one shilling being 24½ cents, and a Pound being, not 480 cents but 484 cents.

Second: The payment of this sea rate shall be optional in either country:

Or: the respective inland rates may be combined with the sea-rate, and the payment of the whole combined rate may be made optional in either country:

Or: if the British Government takes ten pence or twenty cents, as the sea-rate, the combined rate between Liverpool or Southampton and New York, or

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Liverpool and Boston, may be twelve pence only, or twenty four cents; vizt, ten pence for the sea-rate, and one penny inland rate for each country. For letters sent forward in America some further inland postage is required by the nature of the American Continent as explained. But that further sum might be charged and collected in America, and the British Government have no trouble about it.

THIRD: Whatever postage is made optional is to be accounted for. The sums representing the sea-rate shall belong to the Country by which the Packet conveying the letter shall be furnished. The sums representing the respective inland rates shall belong to the respective Countries performing the inland services.

FOURTH: Each country shall account to the other according to the actual number and amount of postages.

FIFTH: On letters destined for countries Foreign or Colonial, the country receiving and transmitting the letter shall charge in lieu of inland Postage the Transit Postage that would be charged upon letters for the same destination and posted by residents at the place where the Packet may arrive.

SIXTH: Each Country shall grant to the other closed mails; the rate of postage to be charged on such correspondence to be the same as that levied on ordinary Transit letters.

SEVENTH: Optional payment of postage may be established between the United States and British North America.

There, for a few months, the matter rested, though some questions were put in the House of Commons (see Hansard, 3d series, XCVIII, 835, 929–31); and on June 27, 1848, a statute of the United States was enacted (see the recommendations of the Postmaster General of January 20, 1848; House Executive Document No. 35, 30th Congress, 1st session, serial 516) which authorized retaliatory postage charges (9 Statutes at Large, 241–42); the gist of the statute was in this, its first sentence:

That the Postmaster-General, under the direction of the President of the United States, be, and he is hereby, authorized and empowered to charge upon, and collect from, all letters and other mailable matter carried to or from any port of the United States, in any foreign packet ship or other vessel, the same rate or rates of charge for American postage which the government to which such foreign packet or other vessel belongs imposes upon letters and other mailable matter conveyed to or from such foreign country in American packets or other vessels, as the postage of such government, and at any time to revoke the same.

The extra rate authorized by that statute was duly put into force; the result was that for some months (until December 1848) there was double sea postage on the Atlantic mails by both the American and British packets.

Questions in the House of Commons were resumed and seem to have had some influence. Bancroft wrote on July 28 (D.S., 58 Despatches, Great Britain, No. 82):

On the subject of the Postal Treaty, I am still without any communication from Lord Palmerston or any other member of the British Government. The effect of the passage of our retaliatory measure has been great. All agree in its justice: indeed, we should have suffered in public esteem, if the Law had been allowed to remain as it was. Scarcely had the news arrived before the Ministry was questioned in the House of Commons with regard to it. Lord Palmerston seemed to think the matter belonged to the Chancellor of the Exchequer and Lord Clanricarde. The Chancellor, on Friday of last week, said the matter lay with Lord Clanricarde. Lord Palmerston promised to look over the papers and say on Monday if they could be printed. Monday came; but Lord Palmerston did not appear 'till the House had entered on the orders of the day. Yesterday

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morning the "Times" newspaper invited the British Government to state its case by publishing its correspondence. Last evening Mr Hume[1] in the House of Commons again invited it to do so; on which the Chancellor of the Exchequer refused to present the papers, on the ground that the negotiation is still going on. The inference from this is obvious. The American view of the case, is, as far as I am informed, regarded almost unanimously as right. I believe the ministry will soon be questioned again on the subject.

The despatch of Bancroft of Friday, August 11, 1848, gives a lively account of an interview which he had with Palmerston; its relevant portion is here quoted (D.S., 58 Despatches, Great Britain, No. 84):

All parties interested in American Commerce appear to be entirely satisfied with the course of our Government in its offers of a Postal Convention with this Country. Last week, on Friday night, the very able member for Liverpool [Edward (later Viscount) Cardwell] brought the subject up in the house of Commons, and asked for the Correspondence. Lord Palmerston postponed his answer 'till Monday. On that day he came into the House of Commons very late,—almost at the last moment when a question could be put. The member for Liverpool insisted on an answer to his question. Lord Palmerston declined to lay the correspondence on the table:—the negotiation was still going on, and he was to make a communication to the American Minister. The Member for Manchester [John Bright] hinted that the British Government had done nothing since the 21st of February. Another member inquired if there had been any communication since the 21st of February; and if in the progress of these negotiations the postage had not been changed from one shilling to two? The Chancellor of the Exchequer said there had been no Diplomatic communications since Feby 21.;—but that there had been other communications which were more likely to lead to a result. Every body interested in the question considered Lord Palmerston pledged to a new proposal.

Calling at the Foreign Office on Wednesday, the Under Secretary said to me—"You might think from the report of the debate on Monday night, we had some proposition to make to you. But there is nothing of the kind. We only intend to send to you from this Office an account of what you know already from Lord Clanricarde and the Chancellor of the Exchequer."

A few minutes after, I met Lord John Russell. He addressed me very cordially. I expressed to him my regret that this little Postal matter was not settled. "I regret it as much as you", said he;—"I did all I could":—and the prevailing opinion is that Lord John is well disposed, but is disinclined to trouble himself with a matter of detail.

I thought it best to wait on Lord Palmerston to find out what he intended to do, & to get at his views. Thursday at one o'clock, I waited on him and drew him into a discussion which on his part grew pretty warm.

He said the British Offer was the most convenient for the merchants. I answered that in framing our proposition we had consulted the merchants of America, as far as we could, and the merchants and manufacturers of England; and that the business classes of the two countries wanted nothing better than what we had proposed.

He said, the distance letters were carried made only an inappreciable difference; hence it was quite right to demand a uniform inland rate of postage for all America. I replied: 1. this demand is not founded in Equity: 2. is not supported by your own Post Office arrangements; for the East India mail has, for example, one rate for a letter to Bombay, and a higher to Calcutta; and all this by order of the Post Office here; and yet, New Orleans is further from Boston than Calcutta from Bombay: 3, as an international question, there was the Postal Treaty of England with France, which allows to France rates twice as high as are taken for England, rates which England in part collects and pays over to France: [for I

[1] Joseph Hume, M.P. for Montrose.

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had learned that of the international postages collected between England and France, England allows France two-thirds.] [1] Lord Palmerston hesitated: and then said that England sought progress: that past abuses were not to be taken as precedents.

He felt the weakness of his answer: and said plainly: "By admitting you to the competition we sustain a loss of revenue, for which we must seek from you some countervailing advantage."

I replied: the increased facilities may increase intercourse, and as a consequence may increase revenue. But if not, what then? It would be but the usual case, where a person or a company having for a time a monopoly of a business, finds a competitor; and we had certainly a right to share in the carrying of correspondence between the two countries. But this right, Lord Palmerston said he was not prepared to admit.

As to the Existence of the present inconvenience to the business classes, Lord Palmerston said, "the origin of all the difficulty is with you. Your Government set up steam boats without being requested to do so by England." "We never asked you to do it." And he repeated this argument.

On my hinting that the difficulty lay in Great Britain's demanding pay for work which the United States had done: he said, that the Postage levied on letters brought into the United Kingdom, was to be considered as a revenue duty, and not as the price paid for a service rendered. If it were to be so considered, then England would certainly have committed an injustice in taking the price of another's labor: but that it is a Revenue impost, or tax, to be levied equally on all letters brought into the United Kingdom whether by Foreign or Home packets: that if we had insisted on setting up Steamers and had carried letters in our Steamers for nothing, there would have resulted no inconvenience.

To the suggestion that the course of the British Government on this subject might produce an unpleasant impression on the public mind in America, Lord Palmerston spoke out with warmth: "That is worn threadbare", said he, with great emphasis. "You want us always to yield to you, in order to keep you in an amicable mood. It has always been so; and we have always yielded to you. We did so on the North-Eastern-Boundary-question; we did so on the Oregon question; and what is the Consequence? There never comes up any disturbance in this country but from one end of the United States to the other you begin an outcry against England. Your ———— (naming one of the recent orators in behalf of Ireland,) and so many others, are always and on every occasion uttering all manner of evil about us."

It was not hard to make Lord Palmerston retract what he had so unguardedly uttered. He at once explained away his remarks, and acknowledged fully the loyalty and honorable conduct towards this Country of all persons in America in responsible places.

Thinking I had heard enough, I asked if I were to report what he had said to me as the answer of his Government. He said he would rather give me a written answer to my note of the 21st of February.

I then endeavored to point out to him the bearing of the question on our commerce with England; the eagerness of the Continent, particularly Germany, to attract our commerce; the increased facilities of intercourse with the Continent from the great emigration of Germans; that as a question between Post-Office and Post-Office the American Post-Office Revenue was well off under the British rule, which Lord Palmerston now and always admits we were quite right in applying on our side if we chose to do so; that as a question between Government and Government, we desired to promote friendly commercial intercourse; that the course of the British Government, if persisted in, must be taken as an authoritative declaration on the part of the British Ministry, that they wished us to look elsewhere for our supplies of European manufactures; that we should take care to show clearly our persevering preference for a friendly and liberal policy; that we wanted no yielding to us, but the mutual adoption of principles of even justice; and that we under all circumstances should deplore but should know how to meet any course on the part of the British Ministry tending to the exclusive protection of a British interest.

[1] The brackets appear in the original despatch.

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Lord Palmerston closed this on his part exceedingly characteristic dialogue by voluntarily acknowledging that we had taken a proper course in the retaliatory measure which Congress had adopted; and expressing in the blandest manner his pleasure at the interview.

Negotiations with the British Postmaster General were reopened verbally on September 22, 1848 (D.S., 58 Despatches, Great Britain, No. 87), and on the following October 14 an accord in principle on the chief point was reached and stated as follows (*ibid.*, No. 94, October 14, 1848; the brackets are in the original; this despatch was read by Clanricarde, as stated in despatch No. 95, of the following day): "that there shall be a sea rate of ten pence to go to the country whose packet does the service; that there shall be a rate of a penny [in America of two cents] to be be levied at the respective ports of arrival and departure which penny [or two cents] is to be the only inland rate for those ports respectively; that on letters received and forwarded inland in the United Kingdom, there may be added the further rate of a penny as the British inland rate; and in like manner on letters received or forwarded inland in the United States, there may be added the American inland rate as established by the American law." But these "varying rates" were deemed by the British authorities very inconvenient (*ibid.*, No. 98, November 3, 1848, enclosure, note of Clanricarde of October 30). Bancroft agreed but thought the total too high; his suggestion, which was accepted and embodied in Articles 1 and 2 of the convention, was thus put forward (*ibid.*, enclosure, note of November 1): "Let there then be one uniform rate extending to all parts of the United States embraced in our regular Mail Service, (I mean to exclude from this, for instance, California and Oregon as you exclude the more accessible Bombay and Calcutta,) of 1½^{d} inland British rate, 8^{d} Sea rate, and 2½^{d} inland American rate."

There remained numerous matters of detail, some of which proved extremely troublesome in the drafting; among these were the clauses regarding "closed mails" and transit letters and the clauses which bore on the postal conventions existing between Great Britain and other countries, particularly that with France of April 3, 1843. As late as November 28 Postmaster General Cave Johnson (who had before him recent despatches, including that of the previous November 10) wrote that he had "lost all hope of any accommodation"; and on November 16 the Secretary of the British Post Office, Colonel W. L. Maberly, informed the Chancellor of the Exchequer that he "considered the Negotiation at an end" (*ibid.*, No. 103, November 24, 1848, enclosure 5); but on December 4 agreement with the Post Office authorities was finally reached. In reporting the agreement Bancroft wrote of the obstacles which he had overcome and added that, while the treaty was to be signed by the Secretary of State (Viscount Palmerston), in the framing of it he had been referred by the Secretary of State to the Treasury, by the Treasury to the Postmaster General, and by the Postmaster General to the Secretary of the Post Office, and that "this last official person avows his continued

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resistance to the Treaty from the beginning" (*ibid.*, No. 106, December 12, 1848).

Even after signed copies of the agreed terms had been interchanged at the General Post Office, alterations of importance were proposed and made, following suggestions by Bancroft to Palmerston and discussion with the Chancellor of the Exchequer, Sir Charles Wood, with whom the terms of the convention were definitively arranged on December 13 (*ibid.*, and enclosures, and No. 107, December 14, 1848); and on the day of the signature of the convention, December 15, 1848, it was transmitted to Washington with the following despatch (D.S., 59 Despatches, Great Britain, No. 108):

I send this day, by the "Europa", for Ratification, a Postal Convention between the United States and the United Kingdom which has just been signed by myself, and, in the absence of the Postmaster General, by Lord Palmerston alone.

In negotiating this Treaty, I have aimed at a just and fair reciprocity; the reduction of the sea-rates; the abrogation of all discriminating charges, whatever; respect for the existing Laws regulating inland postage; and a due regard for facilitating the daily course of manual business in the Post Offices of both Countries. This Convention in its progress has encountered much opposition in some quarters here;—I trust it may meet general approbation at home.

The British Post Master General reluctantly consented to accept the varying inland rates now levied by the Laws of the United States within their territory, and to concede the English rate as fixed by Law. The principle was thus settled; its application was difficult, for it gave, for example, on a letter from Boston to Liverpool, and conversely, one rate if sent directly from Port to Port; another rate if sent by New York and Liverpool; and still another if sent by New York and Southampton. To keep just accounts under so varying rates would have been difficult. I agreed, therefore, to make an average of the inland rates in each Country, (excepting always our mails for California and to our remote territories, by land or sea, which are specially provided for in Article Twelve,) and to adopt uniformly these average rates. In England the inland rate on a letter, if paid in advance, is one Penny: if not paid in advance, as most foreign Letters are not, it is Two pence. Three half pence, then, is a just and fair uniform British inland rate. For America an inland letter, if received at a Post Office, for delivery, and not for transmission, pays two cents; if transmitted it pays a varying rate of Five and Ten cents. The average is therefore Five Cents and two thirds of a cent,—less than six cents. Our Post Master General, moreover, as well as Committees in both Houses of Congress, recommend an uniform rate not exceeding Five cents: That rate, therefore, was taken as the uniform American inland rate. But I consented to this only on condition that the Sea rate should be reduced. This was agreed to: so that now by Articles I, II, and III, there is one uniform rate of Twenty four cents on every letter of half an ounce or less, from any part of the United States, within our established post routes,—whether from New York, or New Orleans, or the remotest village Post Office in the far-west—to any part of the United Kingdom. This is a less rate than the present one between London and Paris. It is what the British Packet rate alone formerly was. This Treaty effects such a reduction in the combined rate, that our American inland rate of Five cents, each way, is obtained out of the former British Packet rate.

After this important concession of a reduced sea rate,—which operates exclusively to our benefit until we get at least an equal number of Mail Packets with England,—I did not think I should be justified in refusing to take the Canada mails across our Territory at the Uniform inland rate established by Article II. It seemed to me wise to treat our Canadian neighbors liberally: A special Act of Congress on the subject of mails in transit to Canada [joint resolution of June 15,1844; 5 Statutes at Large, 718–19], favors such a policy: the concession of a sea rate of Eight pence was coupled with my assent to this Fifth Article: and moreover, I believe that Congress, before this Convention goes fully into opera-

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tion, will have reduced our own rates for our own letters to Canada, to Five Cents. Besides: the old agreement gave to the English closed mails a special express Conveyance;—there is now no stipulation for a separate train, or for extraordinary speed: It is all left to the Post Master General's discretion.

I would have insisted in Article VI, for a corresponding concession for closed mails through Canada at reduced rates. But Great Britain is on the point of transferring the management of the Canadian Post Office to the Canadas; and the Canadas are themselves to reduce their inland postage.

Newspapers are by Article XV to cross the seas in the Mail Packets of either Country without charge for sea conveyance; only each country is to take on its own account, two cents or one Penny on every newspaper going out of it or coming into it. So for the transit, each newspaper is to be charged two cents in America, and in Great Britain one penny or in some cases less.

In like manner, by Articles Seventeen and Eighteen there is to be no charge for sea conveyance of other periodicals, and pamphlets. Each party is to collect for itself suitable inland rates. If more convenient, we may retain our present rates & scale of increase for printed matter, or adopt any other not higher on the average than the rates in the Articles. The rates and scale of increase named in the Treaty are those adopted by Great Britain in all its Postal Conventions. The rate for the first two ounces is very moderate; the scale of increase is high. I would have consented to adopt a lower one; but it was alleged that in practice it would have crowded the mails beyond measure with what perhaps more properly should go through the Custom Houses of the two Countries.

I offered to permit the printed Circulars of merchants and manufacturers to be sent at the same rate as other printed matter. The British Post Office objected: but our American advertisements, if printed as extra newspapers, will pay only newspaper postage.

Freedom of transit for letters and newspapers was of the utmost importance. I held that we should have the right to bring our transit letters in our own Packets to a British port, and deposit them free of British charge in the British Post Office, there to be treated as letters originating in England. The Post Office department insisted on charging three half pence beside. But the Chancellor of the Exchequer viewed the subject exactly as I did: and we very easily came to an agreement on the point, as expressed in Article Twelve. By that Article, a letter sent through England pays in America twenty one cents in advance, instead of twenty four. Of these, five cents is the American inland rate, and sixteen cents the Packet rate, American or British, as it may be. For that payment in advance,—all of which goes into our Treasury if the Packet is ours,—the letter is delivered into the British Post Office, to be sent at the rates paid by the British themselves, to any part of the world to which the British Postal system extends. And conversely.

A small difficulty did indeed arise; but as the Chancellor and I had but one mind on what was right, we easily surmounted it.

By Article VIII, you will perceive that we have a right to send Letters and Newspapers, in the usual channels, or in closed mails, through the United Kingdom, as well to France, as to other foreign Countries. A difficulty occurred in settling the rates to be paid for letters to France, passing through England. By the 52[d] Article of the British and French Postal Convention [of April 3, 1843; British and Foreign State Papers, XXXI, 37–89], (of which I have sent home a Copy,) the French pay on letters, to the British Government one uniform rate of Forty pence per ounce, British net weight, for transit through the United Kingdom and sea conveyance to and from Countries beyond sea. There is one and the same rate for Letters, whether from Brazil or Van Dieman's Land; from Boston or Calcutta. But by our present Treaty with England this rate becomes too high on letters between France and the United States passing through the United Kingdom. The Chancellor of the Exchequer is therefore willing, on his part, to reduce the rates to be paid on such letters, and apply the principle of the Twelfth Article of this Treaty to France.

For this, the concurrence of France is necessary. But, of course, France will not refuse to accept what comes to her mainly as a simple reduction of her rate of postage. At the same time, we ourselves have a motive to introduce France into this part of the negotiation; for, as far as Great Britain is concerned, she has

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a common interest with us. Further; we may have mail Steamers to Havre bringing letters for Great Britain; and these must be provided for. It seems, therefore, that we have nothing to lose by consenting to perfect this part of our arrangement by a tripartite agreement between the three Countries.

The question comes up as to how we shall be placed in the interim. We can send letters under cover to Liverpool, to be there mailed and forwarded to France, at a rate of only three half pence the half ounce beyond what would be payable if France were not excepted from the Twelfth Article. Letters so sent, would in many cases go at less cost than under the British Treaty with France. On a parcel of a half ounce, the New York rate would be Five cents, or two pence halfpenny, the sea rate, Eight pence, the British inland rate one penny halfpenny, to which five pence must be added for Transit from Liverpool to France; while by the English Treaty with France a letter of a half ounce which equally pays in New York Five cents or two pence halfpenny, pays on delivery in France, for sea conveyance and transit, the sum of Twenty pence: So that, by the one way, the cost on a letter of a half ounce from the United States through England to France, will be Seventeen pence, and on the other, will be Twenty Two and a half pence. Of course, England has as strong an interest as we, to remove this inconvenient inequality.

Thus I think it no disadvantage to us to leave the transit rate to France to be settled conjointly with France;—the Chancellor having most explicitly and repeatedly stated, that his wish is to arrange with France to charge on our letters in Transit to France what a Liverpool merchant pays on a letter to France originating in Liverpool, and conversely, without the further exaction of the three half pence British inland rate as established by Article II of this Convention.

The preceding paragraphs of my dispatch, relating to the transit of our Letters and Newspapers, through the United Kingdom to and from France, have been read by me to the Chancellor of the Exchequer, who concurs in the exact accuracy of my statements.

I hope for the approbation of the President on the result of this very laborious negotiation, which could not have been proceeded with but for the aid of Congress, and even now would hardly have been terminated, but for the enlightened goodwill of the First Lord of the Treasury, and the hearty co-operation of the Chancellor of the Exchequer and Viscount Palmerston.

. . . . . .

P.S. By Article IV, you will perceive that I have reserved for our Country the liberty, on letters over a half ounce in weight, to employ the scale of progression in operation in its own territory. But, at the same time, I cannot but recommend the adoption of the English scale of progression. It would raise the rate on scarcely one letter in a hundred; at the same time it would save to the Post Office a great deal of labour on every letter transmitted. The success of the cheap postage system depends on simplifying the manual processes, and diminishing labor. Where the rates are high it is proper to weigh each letter; and so to have a scale of progression by the half ounce. Where rates are uniform and low, the scale of progression should be by the ounce, so that the Post Office clerks may, without often using the scales, at once decide what rate attaches to each letter.

Termination of the Double Sea Postage

On the day before the signature of the convention it was agreed that the charges levied by each country on letters conveyed by the packets of the other should be ended, and the following notes were written, the first by the Chancellor of the Exchequer, Sir Charles Wood, and the second by the American Minister "on behalf of the Postmaster General of the United States" (D.S., 58 Despatches, Great Britain, No. 107, December 14, 1848, enclosures):

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[*Sir Charles Wood to Mr. Bancroft*]

DOWNING STREET, *December 14, 1848.*

DEAR SIR, As we have now arranged the terms of the Convention for regulating the transmission of Letters, and postage thereon, between the United Kingdom and the United States, on the principle that the payment for the sea passage shall always be made to the Country by whose Packets the letters are conveyed but it will require some time before the necessary measures can be taken for executing all the stipulations of the Convention, I would propose to you to relieve the Communication between the two Countries, at once, from the charge levied in each Country on the letters conveyed by the Packets of the other: and I am quite ready to take the necessary steps for this purpose in this Country, if I can rely on a similar course being pursued in the United States.

Yours truly

(Signed) CHARLES WOOD

GEORGE BANCROFT, Esqre
&c &c &c

[*Mr. Bancroft to Sir Charles Wood*]

AMERICAN LEGATION
London 14 December, 1848.

DEAR SIR CHARLES, I accept, on behalf of the Postmaster General of the United States, the proposition contained in your note of this day. I request you therefore, at once to take the necessary steps on your part, to relieve the communications between the two Countries from the charge levied in each Country on the Letters conveyed by the Packets of the other. I am authorized by the Post Master General of the United States to assure you, that a similar course in the United States will forthwith be pursued.

Yours sincerely

(Signed) GEORGE BANCROFT

The CHANCELLOR OF THE EXCHEQUER
&c &c &c

The report of Bancroft regarding this agreement is in the despatch last cited, as follows:

Having yesterday arranged definitively with the Chancellor of the Exchequer the terms of our Postal convention, I urged him to the immediate rescinding of the Post Office order No 9. of June. 1847; offering in return the old rates as they existed with us before our retaliatory law. The Chancellor took the subject into consideration, and at our interview today, he adopted the proposition. A question of form arose. I said, a note from him to me & a reply on my part for Mr Johnson would be sufficient. At once he addressed me the note and I returned the reply, of which you find copies annexed. Pray communicate immediately with Mr Johnson, that our Post Office may adopt *forthwith* the necessary steps for fulfilling the engagement into which I have entered on its behalf. Let me congratulate Mr Johnson on the happy result of his firmness. The difficulties on this side have been wholly at the British Post-Office; the Chancellor it was, who, almost simultaneously with myself suggested (but not to me) the basis on which this troublesome business could be properly settled; and it is due to him to say, that his conduct at the close of this negotiation has been such as was to have been expected from a statesman, careful of the interests of his own country, & at the same time disposed to do justice to ours.

FORM OF THE CONVENTION

All bilateral postal conventions between the United States and Great Britain except the one now under consideration have taken the form

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of agreements made by the Post Office authorities of the two countries and have not been submitted to the Senate of the United States.

During the years immediately preceding 1847 the negotiations that took place between the American and British Post Office Departments were conducted by correspondence, not direct, but through the medium of the diplomatic channel; in February 1843 the Minister at London (Edward Everett) transmitted to the Secretary of State (Daniel Webster) a draft of a postal convention communicated by the Secretary of the General Post Office (Colonel Maberly) by direction of his chief, the Postmaster General (Lord Lonsdale); this draft was referred by the Department of State to the Postmaster General of the United States (Charles A. Wickliffe), who wrote his comments thereon to the American Minister at London, who in turn wrote to the Postmaster General of Great Britain suggesting a conference on the subject (see D.S., 50 Despatches, Great Britain, No. 33, February 28, 1843; 15 Instructions, Great Britain, 83–84, March 29, 1843; 56 Despatches, Great Britain, No. 47, May 21, 1846, and enclosures); and the proposals and other communications that led up to the postal convention of February 14, 1845 (the text of which is printed above in these notes), passed to and fro along a somewhat similarly circuitous route, the British Minister at Washington being in that instance one of the intermediaries instead of the American Minister at London (see Library of Congress, Pakenham Papers, facsimiles from the Public Record Office, London, Foreign Office Records, 1844–45, *passim*).

The mission to Europe of Selah R. Hobbie, First Assistant Postmaster General of the United States, in 1847, is an early instance of direct Post Office negotiations; and the chief reason for that mission was the establishment of the policy of American mail steamers by the acts of March 3, 1845, and March 3, 1847 (5 Statutes at Large, 748–50, and 9 *ibid.*, 187–88); it was on the maiden voyage of the first of the American packets, the *Washington*, that Hobbie embarked for Bremen on June 1, 1847; he was sent by the Post Office Department "with ample powers to make postal arrangements" (letter of Cave Johnson of July 27, 1847, quoted above. For the results of the mission of Hobbie and his powers, instructions, and report, see Senate Executive Document No. 1, 30th Congress, 1st session, serial 503, pp. 1324–27; House Executive Document No. 35, 30th Congress, 1st session, serial 516; Senate Executive Document No. 25, 30th Congress, 2d session, serial 531).

Those powers had statutory bases and limitations; there were in force two enactments granting authority in this regard to the Postmaster General; one of these, the act of March 3, 1825, was a general statute, section 34 of which is relevant here (4 Statutes at Large, 102–14; the wording of the relevant section is from section 26 of the act of February 20, 1792, 1 *ibid.*, 232–39); the joint resolution of June 15, 1844 (5 *ibid.*, 718–19), dealt with arrangements for the Canadian mails and with the authorities in France and Germany. The rates of postage fixed by the act of 1825 had been reduced by the act of March 3, 1845 (*ibid.*, 732–39).

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Had the controversy regarding the double sea postage not arisen, it may well be that Bancroft would not have taken part in the postal negotiations initiated at London in the summer of 1847; and in any case the form of agreement first contemplated was a postal convention made as an arrangement between the two Post Office Departments. In his despatch of October 9, 1847, Bancroft wrote (D.S., 57 Despatches, Great Britain, No. 47):

> Mr Hobbie came to town in season to be at the Legation on the morning of Monday the 4th of October. We first considered the powers given us for making a Postal arrangement with Great Britain. They seemed so ample as to include a delegation of all the powers of the Post Master General himself, on the subject.
>
> Mr Johnson in his letter to me of August 23, expresses his hope that an arrangement for the interchange of mails between the two countries may be effected "on terms equally advantageous to both".
>
> The 34th Section of Chapter 54, Session of 1825 . . . gives unqualified power to the Post Master General to "make arrangements with the Post Masters in any foreign Country for the reciprocal receipt and delivery of letters and packets through the Post Office".
>
> The joint Resolution of June 15, 1844 . . . authorizes special arrangements respecting the Canada Mail, and points to optional prepayment as the American policy with Foreign Commercial States.
>
> Under these circumstances we deemed ourselves authorized to proceed in framing an arrangement with the Post Master General of Great Britain.

Clearly there was not at that time in the minds of either American official any arrangement going beyond the described statutory authority of the Postmaster General of the United States.

Two weeks later Bancroft envisaged the possibility of a different form of convention and asked for instructions; from his despatch of October 23, 1847, the following is excerpted (*ibid.*, No. 50):

> As Mr Hobbie returns in the "Washington", to-morrow, I feel more sensibly the want of further and more definite instructions. Shall the Postal arrangement be concluded as a Treaty, or by me as Agent of the Post Office? Shall it be completed here, and at once put into effect? Or shall it be transmitted to America for execution? What rates, Inland and Sea will be satisfactory? And what are admissible? What rates are admissible for the Canada Postage?
>
> I should like specific opinions and Instructions from yourself or Mr Johnson on every point.

It seems that Bancroft then had in mind the distinction that while a convention generally providing for reciprocal treatment might be signed by him forthwith "as Agent of the Post Office", an agreement with detailed clauses of rates would perhaps require more time and a different procedure. A note to Clanricarde of the same date as the despatch last cited contains these paragraphs (*ibid.*, enclosure 3):

> I am ready at any moment to sign and put into immediate operation a Convention on general terms of entire reciprocity, as expressed in the Commercial Convention of 1815; leaving each country to regulate respectively its inland postage and transit rates, but applying uniform rates to packet ships and letters of both countries.
>
> And I am also ready, whenever it may suit your Lordship's pleasure to give continuous attention to the questions of transit and other rates; if the mode of adjustment by fixed rates, jointly agreed upon, is preferred by your Lordship.

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The course which the negotiations took a year later brought clearly into view the two sources of authority under which Bancroft might act; as set forth earlier in this narrative, Bancroft and Clanricarde reached an agreement in principle on October 14, 1848; that basis (quoted above) was one of simple reciprocity; but when it was implemented, practical inconveniences were apparent and both negotiators preferred (and finally adopted) clauses for uniformity of rates, leading to a convention of much greater detail; difficulties arose in the drafting of those clauses; at a moment when those difficulties appeared to be quite serious, Bancroft proposed, in the event that they should prove to be fatal, or even to necessitate delay, to revert to the basis of October 14; such an agreement could, Bancroft said, be signed as one between the two Post Offices (although he had earlier spoken of its submission to the Senate; see D.S., 58 Despatches, Great Britain, No. 95, October 15, 1848), while the more elaborate "uniformity" clauses required "the sanction of the President and Senate".

The reasons for Bancroft's opinion (the correctness of which is not doubted) were these: Inland rates of postage in the United States were fixed by law; the proposed "reciprocity" convention left them as they were; the submission to the Senate of such a convention, while doubtless possible, was superfluous, as it was clearly within the statutory authority of the Postmaster General under section 34 of the act of 1825 (cited previously); but on the other hand the proposed "uniformity" convention not only varied those lawful rates but in some cases lowered them below the figures of the statute; for such a convention the Postmaster General of the United States had no power; only a treaty approved by the Senate (or an amending statute) might override the enactment; so the proposed "reciprocity" convention Bancroft had accepted on behalf of the Postmaster General; the "uniformity" convention he accepted only "as Minister". Bancroft thus wrote to Clanricarde on the subject on November 23, 1848 (*ibid.*, No. 103, November 24, 1848, enclosure 10):

> The report which I made to my Government on the 14th of October, of our settlement of the Post Office differences, gave great satisfaction. I sent home the identical paper which I had submitted for your perusal, and which obtained your approbation. The public got some intimation of our Agreement, and general gratification was expressed, in precisely that tone of feeling which I am sure your Lordship as well as I, wishes may ever prevail. Mr Johnson our Postmaster General, has returned his cordial approval of the arrangement agreed upon; he likes the basis on which it rests; and further: he authorizes me at once to sign a Convention on the basis of your Proposition of the 14th October, to go into operation immediately, his powers being sufficient for that purpose. If, therefore, our negotiation for uniformity, *which requires the sanction of the President and Senate*, shall be delayed, or shall fail, I have only to ask you, on your return to London, to sign with me, or in your absence, to cause to be signed by the Secretary of the Post Office on your side, and the Secretary of this Legation on mine, the few simple articles you offered me and I accepted at our interview of the 14th of October.
>
> I say, if our negotiation for uniformity shall be delayed, or shall fail. . . .
>
> In the draft of the Treaty, the Fifth Article which we, under the basis of the 14th of October were agreed upon, was altered, and the Rate of Five cents for the Canada Mails was substituted, even in cases where our people pay Ten. I could not agree to this without reflection. Taking a day to think of it, and remembering that I could yield this only on my responsibility as Minister, I yet, to show you my earnest disposition to meet your wishes, resolved to do so.

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This convention is thus an illustration of the well-settled principle that a treaty as the "supreme Law of the Land" may supersede (in this case *pro tanto*) an earlier and conflicting statute.

It is, moreover, significant that when Bancroft signed the convention of December 15, 1848, he (almost certainly) had before him a letter of Cave Johnson, Postmaster General, expressly *disapproving* certain of its clauses; only one paragraph of that letter of November 28, 1848, need be quoted (D.S., 58 Despatches, Great Britain, bound following despatch No. 100 and enclosures):

> I can never give my Consent to any Postal arrangement which will authorise the letters of the Citizens of the United States, when Conveyed in the English Mails, to be Charged more than is paid by British subjects for the same service and at the same time, undertake to Convey British letters in the Mails of the United States for less than the price paid by our own Citizens.

The second paragraph of the preamble (which Bancroft wrote; see his note to Palmerston of December 5, 1848, and the enclosed "Counterpart Copy of the Preamble"; *ibid.*, No. 106, December 12, 1848, enclosure) in itself shows that Bancroft was acting "as Minister"; he is there said to have been named as Plenipotentiary "by and with the advice and consent of the Senate"; the reference is to his commission of December 23, 1846, as "Envoy Extraordinary and Minister Plenipotentiary of The United States of America at the Court of The United Kingdom of Great Britain and Ireland", following confirmation by the Senate on the same day (D.S., 3 Credences, 185; see Executive Journal, VII, 168; the earlier recess commission is of September 9, 1846; see D.S., 3 Credences, 183); there is no record of the issuance of any full power to Bancroft for this convention; and while there is the usual formal mention in the preamble (paragraph 4) of the communication of the respective full powers, the wording quoted from the second paragraph is evidence that none was issued, for the consent of the Senate to the naming of a Minister in a full power was (and is) unnecessary; Bancroft had plenary authority to sign; and it was to that authority and not to any formal instrument that he referred when he wrote to Clanricarde (in answer to his enquiry) on November 1, 1848, "I have full powers to conclude and sign a Treaty" (D.S., 58 Despatches, Great Britain, No. 92, November 3, 1848, enclosures).

But in one respect Bancroft did act formally not "as Minister" but "on behalf of the Postmaster General of the United States"; his note to the Chancellor of the Exchequer of December 14, 1848 (quoted above), agreeing to the termination on both sides of the double sea postage, is expressly so worded.

There is nothing in the papers (aside from the customary words of the fourth paragraph of the preamble) regarding the issuance of any full power (in the formal sense) to Lord Palmerston; such an instrument was doubtless deemed unnecessary. The fact that the Marquis of Clanricarde did not also sign on behalf of Great Britain is attributed to his absence from London at the time (see the first paragraph of the despatch of Bancroft of December 15, 1848, quoted above); so this

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postal convention was signed by the British Secretary of State for Foreign Affairs and the American Minister as the respective Plenipotentiaries, a circumstance unique in the relations of the two countries.

While, as has been seen, it was essential from the American standpoint that this convention should be written as a treaty for submission to the Senate, it appears that, for very different reasons, the form adopted was also deemed desirable by the British Government and that a simple arrangement between the two Post Offices would hardly have been acceptable; the following excerpts are relevant to the point (D.S., 58 Despatches, Great Britain):

> The Marquess of Clanricarde declared the difficulty he had had in coming to an agreement on his sole responsibility as Post Master General; that as a member of the government he viewed the question as an international one; that the First Lord of the Treasury and the Chancellor of the Exchequer agreed in wishing the subject satisfactorily settled. [No. 94 from Bancroft, October 14, 1848.]

> I see no reason why the new arrangements should not come into operation with the new Year, even if the Treaty should not be formally signed. Because I understand the Postmaster General of the United States to possess sufficient powers, as does the Treasury of my Government, to give immediate effect to our agreement. [Clanricarde to Bancroft, November 10, 1848, enclosure to No. 100, of the same date.]

> Lord Clanricarde must have the official sanction of the Treasury before he could sign even a provisional agreement; still if the Chancellor of the Exchequer agrees, all this may be arranged in a few days by his giving directions . . . to have the matter arranged immediately. I fear the provisional agreement could not come into operation by the 1st of January. After the warrant was signed by the Lords of the Treasury we would want 8 or 10 days to print and circulate through the Kingdom the necessary orders to our Postmasters. [Maberly to Bancroft, November 13, 1848, enclosure to No. 101, November 17, 1848.]

> Lord Clanricarde appears still to decline to make a Postal Convention between the two Post Offices. Indeed, he once told me he was unwilling to do so, because he wished to share with his Government the responsibility of the Postal Treaty. [No. 104 from Bancroft, December 1, 1848.]

> Having yesterday arranged definitively with the Chancellor of the Exchequer the terms of our Postal convention. . . . [No. 107 from Bancroft, December 14, 1848.]

During this general period some British postal conventions were signed as formal diplomatic instruments and some as arrangements between Post Offices; for example, the convention with France of April 3, 1843 (British and Foreign State Papers, XXXI, 37–89), was signed at London by the Secretary of State for Foreign Affairs and the Postmaster General on the one hand and by the French Ambassador on the other, with full powers, respectively, from the Queen of the United Kingdom of Great Britain and Ireland and from the King of the French; similarly, the convention with France of September 24, 1856 (*ibid.*, XLVI, 195–224), was signed at Paris by the British Ambassador and the French Minister for Foreign Affairs, with full powers from their respective monarchs; on the other hand, the convention with the Netherlands of October 14, 1843 (*ibid.*, XXXI, 89–109), was signed at London by postal officials with full powers from

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the respective chiefs of the Post Offices of the two countries; the content of the two conventions with France mentioned is doubtless to be deemed at least one reason for the difference of form; such articles as 7 and 8 of the convention of 1843 and 5 and 11 of the convention of 1856 would normally be only for Foreign Offices to write.

ARTICLE 12

The final paragraph of Article 12 excepts from the previous stipulations transit mail to and from France through England, adding that "the two contracting parties agree to invite France to enter into Communication with them without loss of time, in order to effect such arrangements for the conveyance of Letters and Newspapers and closed mails through the territories of the United States, of the United Kingdom, and of France respectively, as may be most conducive to the interests of the three Countries."

Steps were at once taken in this regard; a full power was issued, as follows (D.S., 3 Credences, 259):

James K. Polk, President of the United States of America,

To all to whom these presents shall come, Greeting:

Know Ye, That reposing special trust and confidence in the integrity, prudence, and abilities of George Bancroft, Envoy Extraordinary and Minister Plenipotentiary at London, and Richard Rush, Envoy Extraordinary and Minister Plenipotentiary at Paris, I have invested them with full and all manner of power, for and in the name of the United States, to meet and confer, jointly or severally, with any person or persons furnished with like powers on the part of Great Britain and of France, and with him or them to negotiate for the arrangement and improvement of the communication by post between the United States of America, Great Britain, and France, and of all matters and subjects connected therewith which may be interesting to the three countries; and to conclude or sign a treaty or treaties, convention or conventions, touching the premises, transmitting the same to the President of the United States for his ratification by and with the advice and consent of the Senate thereof.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed. Given under my hand, at the City of Washington (L.S.) on the eighth day of January, in the year of our Lord one thousand eight hundred and forty-nine.

JAMES K. POLK.

By the President:
JAMES BUCHANAN,
Secretary of State.

The negotiations contemplated were to be carried on by Bancroft exclusively, if had at London, but otherwise if at Paris (D.S., 15 Instructions, Great Britain, 377–78); they were at once initiated at Paris (D.S., 59 Despatches, Great Britain, Nos. 118 and 119, February 7 and 8, 1849); but neither the efforts of Bancroft nor those of his successors during some years were successful; and in 1853 the advisability of terminating this convention of 1848, pursuant to the provisions of Article 22 thereof, was considered (D.S., 16 Instructions, Great Britain, 189–90, February 3, 1853). The printed correspondence up to 1855 is extensive (Senate Executive Documents No. 32, 32d Congress, 2d session, serial 660, and No. 73, 33d Congress, 2d

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session, serial 756); the questions involved are elaborately presented in a letter of the Postmaster General (James Campbell) to the Secretary of State (William L. Marcy) of July 19, 1853 (printed in *ibid.*, pp. 47–56); they are referred to in the successive annual reports of the Postmasters General from 1849 to 1857, inclusive (Senate Executive Documents No. 1, pt. 1, 31st Congress, 1st session, serial 549, p. 795; No. 1, pt. 1, 31st Congress, 2d session, serial 587, p. 407; No. 1, pt. 2, 32d Congress, 1st session, serial 612, pp. 438–39; No. 1, pt. 2, 32d Congress, 2d session, serial 659, p. 645; No. 1, pt. 3, 33d Congress, 1st session, serial 692, pp. 720–21; No. 1, pt. 2, 33d Congress, 2d session, serial 747, pp. 631–33; No. 1, pt. 3, 34th Congress, 1st session, serial 812, p. 333; No. 5, pt. 2, 34th Congress, 3d session, serial 876, pp. 773–74; No. 11, pt. 3, 35th Congress, 1st session, serial 921, p. 974); the latest of those reports announced the conclusion of a postal convention with France on March 2, 1857 (16 Statutes at Large, 871–89); regarding that convention the report said: "The rate of postage for letters of the weight of one-quarter ounce or under is fifteen cents, irrespective of the route, whether through England or direct, by which they are conveyed. France accounts to Great Britain for the British sea, and transit postage, as explained in the articles of agreement hereto annexed. This is the first postal convention between the two countries."

That postal convention of March 2, 1857, between the United States and France appears to have been made possible by the postal convention of September 24, 1856, between France and Great Britain (British and Foreign State Papers, XLVI, 195–224); the rates fixed by that convention are strikingly lower than those of the earlier convention between the two countries (April 3, 1843; *ibid.*, XXXI, 37–89); for example (reduced to American currency at the then approximate equivalents), the sum payable for transit and sea conveyance of letters by the convention of 1843 is 80 cents an ounce net weight, and by the convention of 1856, 32 cents (cf. Article 52 of the convention of 1843 with Articles 21 and 22 of the convention of 1856).

ARTICLE 21

There were sixteen subsequent agreements made between the respective Post Offices, pursuant to Article 21; these are listed in 16 Statutes at Large, xxxi, and are printed in the same volume at pages 788–832.

ARTICLE 22

This convention was superseded and terminated by the convention between the two Post Offices of June 18, 1867 (*ibid.*, 833–36).

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Treaty Series No. 35
9 Statutes at Large, 971–73
18 *ibid.*, pt. 2, Public Treaties, 90–91

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BRAZIL : JANUARY 27, 1849

Convention for the Settlement of Claims, signed at Rio de Janeiro January 27, 1849. Original in English and Portuguese. Submitted to the Senate December 17, 1849. Resolution of advice and consent January 14, 1850. Ratified by the United States January 18, 1850. Ratified by Brazil January 27, 1849. Ratifications exchanged at Washington January 18, 1850. Proclaimed January 19, 1850.

In the Name of the Most Holy and Indivisible Trinity

The United States of America, and His Majesty, the Emperor of Brazil, Desiring to remove every cause that might interfere with the good understanding and harmony which now happily exist between them, and which it is so much the interest of both Countries to maintain; and to come for that purpose to a definitive understanding, equally just and honorable to each, as to the mode of settling the long pending questions arising out of claims of citizens of said States, have for the same appointed, and conferred full powers, respectively, to wit:

The President of the United States of America, on David Tod, Envoy Extraordinary and Minister Plenipotentiary from the said States near the Court of Brazil, and His Majesty the Emperor of Brazil, upon the Most

Em Nome da Santissima e Indivisivel Trindade

Sua Magestade o Imperador do Brazil; e os Estados Unidos da America, Desejando, para removerem qualquer motivo que empeça a bôa harmonia e intelligencia, que felizmente subsistem entre os dous Paizes, e tanto lhes interessa manter, chegar á um accordo definitivo, igualmente justo e honroso para ambos, sobre o modo de pôr termo ás questões ha tanto tempo pendentes, provenientes de reclamações de cidadãos dos ditos Estados, nomeárão e munirão com Plenos Poderes para aquelle fim, respectivamente, a saber:

Sua Magestade o Imperador do Brazil ao Illustrissimo e Excellentissimo Sñr Visconde de Olinda, do Seu Conselho, e do de Estado, Senador e Grande do Imperio, Grão Cruz das Ordens de Santo Estevão da Hungria, da Legião de

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Illustrious and Most Excellent Viscount of Olinda, of His Council, and of the Council of State, Senator and Grandee of the Empire, Grand Cross of the Order of Saint Stephen of Hungary, of the Legion of Honor of France, and of Saint Maurice and Saint Lazarus of Sardinia, officer of the Imperial order of the Cross, Commander of the order of Christ, President of the Council of Ministers, Minister and Secretary of State for Foreign Affairs; who after exchanging their full Powers, which were found in good and proper form, agreed to the following articles:

ARTICLE I

The two High Contracting Parties, appreciating the difficulty of agreeing upon the subject of said reclamations, from the belief entertained by each,—one of the justice of the claims, and the other, of their injustice,—and being convinced that the only equitable and honorable method by which the two Countries can arrive at a perfect understanding of said questions, is to adjust them by a single act; they mutually agreed, after a mature examination of these claims; and, in order to carry this agreement into execution, it becomes the duty of Brazil to place at the disposition of the President of the United States the amount of five hundred and thirty thousand mil

Honra da França, e de S. Mauricio e S Lazaro de Sardenha, Official da Imperial Ordem do Cruzeiro, Commendador da de Christo, Presidente do Conselho de Ministros, Ministro e Secretario d'Estado dos Negocios Estrangeiros; e o Presidente dos Estados Unidos d'America ao Sñr David Tod, Enviado Extraordinario e Ministro Plenipotenciario dos mesmos Estados na Côrte do Brazil: os quaes, depois de terem trocado seus Plenos Poderes, que forão achados em bôa e devida fórma, concordarão nos seguintes artigos:

ARTIGO I

Conhecendo as duas Altas Partes Contractantes a difficuldade de se entenderem sobre o assumpto daquellas reclamações pela Convicção, em que ambas estão, uma da justica, e outra da injustiça das mesmos reclamações, e convencidas que o unico meio justo e honroso para chegarem os dous Paizes á um perfeito accôrdo em taes questões será resolvel-as por via de uma transacção; concordárão mutuamente, depois de maduro exame sobre aquellas reclamações, e para o fim de poder levar-se á effeito aquella transacção; em que por parte do Brazil se ponha á disposição do Presidente dos Estados Unidos a quantia de quinhentos e tinta contos de reis, moeda corrente

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reis, current money of Brazil, as a reasonable and equitable sum, which shall comprehend the whole of the reclamations, whatever may be their nature, and amount, and as full compensation for the indemnifications claimed by the Government of said States; to be paid in a round sum, without reference to any one of said claims, upon the merits of which the two High Contracting Parties refrain from entering; it being left to the Government of the United States to estimate the justice that may pertain to the claimants, for the purpose of distributing among them the aforesaid sum of five hundred and thirty thousand mil reis, as it may deem most proper.

do Brazil, como quantitativo razoavel e equitativo, que comprehenderá a generalidade dos reclamações, qualquer que seja a sua natureza e importancia, e como compensação plena pelas indemnidades reclamadas pelo Governo dos ditos Estados; as quaes serão satisfeitas em globo, sem referencia á nenhuma dessas reclamações, em cujo merito prescindem de entrar as Altas Partes Contractantes; ficando ao Governo dos Estados Unidos o avaliar a justiça, que assista aos reclamantes, para distribuir por elles a supradita soma de quinhentos e trinta contos de reis como julgue mais conveniente.

ARTICLE II

In conformity to what is agreed upon in the preceding article, Brazil is exonerated from all responsibility springing out of the aforesaid claims presented by the Government of the United States up to the date of this Convention, which can neither be reproduced, nor reconsidered in future.

ARTIGO II

Em conformidade do que fica concordado no artigo antecedente é exonerado o Brazil de qualquer responsabilidade proveniente das ditas reclamações, apresentadas pelo Governo dos Estados Unidos até a data desta Convenção; as quaes não poderão ser mais reproduzidas, e nem attendidas no futuro.

ARTICLE III

In order that the Government of the United States may be enabled properly to consider the claims of the citizens of said States,—they remaining, as above declared, subject to its judgment,—the respective documents

ARTIGO III

A fim de que o Governo dos Estados Unidos possa attender devidamente ás reclamações dos cidadãos dos mesmos Estados, que pela fórma acima declarada ficão sujeitas á sua apreciação, ser-lhe-ão entregues pelo Governo Impe-

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which throw light upon them shall be delivered by the Imperial Government to that of the United States, so soon as this convention shall receive the ratification of the Government of said States.

ARTICLE IV

The sum agreed upon shall be paid by the Imperial Government to that of the United States, in the current money of Brazil, as soon as the exchange of the ratifications of this Convention is made known in this capital, for which His Majesty, the Emperor of Brazil pledges himself to obtain the necessary funds at the next session of the Legislature.

ARTICLE V

The payment of the sum above named of five hundred and thirty thousand mil reis shall not be made until after the reception of the notice in this capital of the exchange of ratifications; but the said sum shall bear interest, at six per centum per annum from the first day of July next; the Imperial Government, however, obliges itself to make good that interest only when, in conformity to the preceding article of this Convention, the amount stipulated shall be paid.

ARTICLE VI

The present convention shall be ratified, and the ratifications exchanged, in Washington, within twelve months after it is signed

rial os respectivos documentos que lhes sirvão de illustração, logo que a presente Convenção tenha a ratificação do Governo dos Estados Unidos.

ARTIGO IV.

A soma estipulada será entregue pelo Governo Imperial ao dos Estados Unidos em moeda corrente do Brazil, logo que conste nesta Corte a troca das ratificações desta Convenção, para o que Sua Magestade o Imperador do Brazil se compromette a obter os precisos fundos na proxima Sessão Legislativa.

ARTIGO V

Ainda que o pagamento da quantia supra mencionada de quinhentos e trinta contos de reis não se effectue, senão depois de chegar á esta Côrte a noticia da troca das ratificações, a dita quantia vencerá o juro de seis por cento ao anno, desde o primeiro de Julho proximo futuro; obrigando-se o Governo Imperial a fazer bom esse juro, só quando, na fórma do precedente artigo desta Convenção, se verifique o pagamento da soma ajustada.

ARTIGO VI

A presente Convenção será ratificada, e as ratificações trocadas em Washington, dentro de doze mezes depois de sua assignatura

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in this capital, or sooner if possible.

In faith of which we, Plenipotentiaries of the United States of America, and of His Majesty, the Emperor of Brazil, sign and seal the same.

Done in the City of Rio de Janeiro this twenty seventh day of January in the year of our Lord one thousand eight hundred and forty nine.

DAVID TOD [Seal]
[Seal] VISCONDE DE OLINDA

nesta Côrte, ou mais cedo se for possivel.

Em fé do que nós Plenipotenciarios de Sua Magestade o Imperador do Brazil e dos Estados Unidos da America assignamos e sellamos a presente

Feita na Cidade do Rio de Janeiro aos vinte e sete de Janeiro do anno do Nascimento de Nosso Senhor Jesus Christo de mil oito centos e quarenta e nove.

[Seal] VISCONDE DE OLINDA
DAVID TOD. [Seal]

NOTES

The papers in the treaty file are in customary form. The signed original of the convention is in the two languages, the English in the left columns. Other papers are the attested resolution of the Senate of January 14, the duplicate United States instrument of ratification of January 18, and the original proclamation of January 19, 1850; the certificate of the exchange of ratifications at Washington on January 18, 1850, is written in English.

The instrument of ratification on the part of Brazil is of the same date as the convention, January 27, 1849; it includes the text of the convention in Portuguese only.

The convention was submitted to the Senate on December 17, 1849, with the following presidential message (Executive Journal, VIII, 97; the message is there misdated December 27, 1849; see Richardson, V, 24–25):

> I transmit to the Senate, for its consideration, with a view to ratification, a convention between the United States and His Majesty the Emperor of Brazil, signed at Rio de Janeiro on the twenty-seventh of January last, providing for the adjustment of claims of citizens of the United States on the Brazilian Government. A copy of a dispatch from Mr. Tod, the United States minister at Rio de Janeiro, relative to the convention, is also herewith communicated. As it is understood that the Emperor's ratification is ready to be exchanged for that of the United States, and as the period limited for the exchange will expire on the 27th of next month, it is desirable that the decision of the Senate in regard to the instrument should be known as soon as may be convenient.

The despatch communicated with the convention was presumably that of January 27, 1849, with which the convention was transmitted to the Department of State (the Senate print is not available); that despatch is cited and quoted in part below.

The convention was communicated to Congress with the presidential message of January 23, 1850 (Richardson, V, 30).

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Like the treaty with Brazil of December 12, 1828 (Document 64), this convention opens with the invocation, "In the Name of the Most Holy and Indivisible Trinity". The notes to the treaty of July 4, 1827, with Sweden and Norway (Document 55), contain some observations regarding the use of that phrase.

The Full Powers

With his instruction of June 11, 1847, David Tod, Minister to Brazil, was furnished with a full power dated two days earlier and in the following form (D.S., 3 Credences, 209):

James K. Polk, President of the United States of America,

To all whom these presents shall concern, Greeting:

Know Ye, That for the purpose of confirming between the United States and the Empire of Brazil, perfect harmony and good correspondence and of removing all grounds of dissatisfaction, and reposing special trust and confidence in the integrity, prudence and abilities of David Tod, appointed Envoy Extraordinary and Minister Plenipotentiary of the United States to His Majesty the Emperor of Brazil, I have invested him with full and all manner of power and authority for and in the name of the United States to meet and confer with any person or persons duly authorized by His said Majesty, being furnished with like power and authority, and with him or them to agree, treat, consult and negotiate of and concerning general commerce and claims of the citizens of the two countries respectively upon the Governments of Brazil and the United States, and all matters and subjects connected therewith; and to conclude and sign a Treaty or Treaties, Convention or Conventions touching the premises, transmitting the same to the President of the United States for his ratification, by and with the advice and consent of the Senate of the United States.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed. Given under my hand at the City of Washington,
(L. S.) the ninth day of June, AD 1847; and of the Independence of the United States of America, the seventy first.

James K. Polk.

By The President:
James Buchanan,
Secretary of State.

In the preamble of the convention is a formal statement of the exchange of the full powers; but nothing further appears in the correspondence or elsewhere regarding the full power of the Brazilian Plenipotentiary, the Visconde de Olinda, who was President of the Council of Ministers and Minister and Secretary of State for Foreign Affairs; and it is to be noted that the convention was approved and ratified by the Emperor of Brazil, Dom Pedro II, on the day of its signature, that the instrument of ratification was forwarded at once to the Brazilian Legation at Washington for exchange, and that Tod was officially informed of these facts (see D.S., 17 Despatches, Brazil, No. 35, January 27, 1849, enclosure C, of the same date); the Brazilian Plenipotentiary had conducted his negotiations under the eye of his monarch; and only four days before the signature of the convention there had been "much conversation" between the Emperor, who spoke English "quite well", and Tod, who did not know Portuguese, at a private audience (*ibid.*).

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The Negotiations

Following the appointment on March 3, 1847, of David Tod, of Ohio, as Minister to Brazil, the instructions regarding claims which had been given to his predecessors were renewed in general terms, he was referred to previous correspondence for details (D.S., 15 Instructions, Brazil, 147–52, June 11, 1847), and he was given a full power to treat (quoted above). As a basis for a convention, that with Mexico of April 11, 1839 (Document 89), was proposed by Tod to the Brazilian Minister and Secretary of State for Foreign Affairs, Saturnino de Souza e Oliveira Coutinho (D.S., 17 Despatches, Brazil, No. 10, October 12, 1847, enclosure C, October 1, 1847); there was some delay, caused in part by a change of ministry; on April 5, 1848, the then Minister for Foreign Affairs, Antonio Paulino Limpo de Abreu, stated that the Imperial Government would not enter into the proposed convention but "that he would recommend to his government to offer to the United States a round sum which, if accepted, should be in full satisfaction for all the claims—leaving to the United States the duty of passing upon the merits of each particular claim, and distributing the fund accordingly. That, if his Government suffered him to make this proposition, and I should accept it, he would use every exertion in his power to fix upon the amount to be offered . . . so that there should be but little further delay in the matter." Tod "at once agreed to accept this proposition, if made" to him (*ibid.*, No. 22, April 21, 1848); the proposal for a settlement of the nature suggested was duly made by note of April 13 (*ibid.*, enclosure B); the result was thus set forth by Tod as accepted by him in his answering note of April 17 (*ibid.*, enclosure C):

> First.—That the Imperial Government could not assent to the Mixed Commission for the settlement of said Claims, as proposed by the Government of the United States.
>
> Second.—That the Imperial Government would, after a reasonable time for deliberation, fix upon a round sum, which it would offer to the Government of the United States, to be by it distributed among the several claimants, which sum should be a reasonable and equitable one, in view of all the claims preferred, and, when received by the United States, to be taken in full of all claims of its citizens now pending against the Imperial Government.

The annual report of the Minister for Foreign Affairs (May 1, 1848) includes these paragraphs on the arrangement reached (*ibid.*, No. 26, July 8, 1848, translation enclosed):

> The Imperial Government and that of the United States have not been able, up to the present time, to come to an understanding upon the subject of the North American claims, under the convictions entertained by both, one of the propriety and the other of the impropriety of said claims.
>
> The Envoy Extraordinary and Minister Plenipotentiary of those States near this Court, being specially authorized to promote the furthering and final conclusion of these questions, proposed, during the time of my predecessor, that they be submitted to a mixed commission, or arbitral court, selected by the two Governments, to decide upon their merits and upon the question of the indemnity due. This would certainly be a prompt manner of terminating the misunderstanding in which the two Governments have been for so many years involved; but the Imperial Government, aware that among the claims which it

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is wished should be embraced in the proposed agreement, some have been decided in the last instance and, even in the recourse to the most especial favor, cannot admit upon them other trial or competency of revision without infringing on the respect due to those tribunals.

There is, however, another means by which these questions can be concluded, which will be equally decorous to both countries and preferable to that proposed by the Minister of the United States—a course which may extinguish at once all the pending claims, the Imperial Government paying a round sum, reasonable and equitable, as a compensation for indemnities claimed, without reference, however, to any one of the said claims—that is, without admitting or excluding specially any of those that may be well founded—the whole, however, to be revised in order to form some idea as to their amount.

The Imperial Government has proposed to enter into this arrangement, which has already been accepted by the Minister of the United States—the result of which will be in due time communicated to you.

The "round sum" remained to be agreed upon; there were "frequent changes in the Cabinet" at Rio de Janeiro, and the subject was "canvassed" at "repeated interviews with the several Ministers" until January 1849; and Tod had some doubts as to his authority to pass upon the amount to be proposed (*ibid.*, No. 34, January 11, 1849); but he consulted with the American houses of James Birckhead, John Gardner, and Maxwell, Wright & Company, agents for most of the larger claimants, from whom he obtained written approval of the terms. The convention was signed on January 27, 1849, and the original was transmitted with the despatch of the same date, wherein Tod wrote (*ibid.*, No. 35):

It affords me great pleasure to announce to you that I have at length concluded a Convention for the settlement of our Claims against this Government.

The Articles were signed to-day, and the copy for our Government is herewith transmitted to you. The sum agreed to be paid by the Imperial Government, you will see is five hundred and thirty thousand mil reis, with interest thereon from the first day of June [1] next. This is the highest amount it was in my power to induce the Negotiator on the part of the Emperor, (the Viscount de Olinda, Minister and Secretary of State for Foreign Affairs, &c. &c.,) to consent to give, and I am well satisfied it is a sum far beyond what he thought was either legally or equitably due.

All things considered, I deem the terms of adjustment very favorable to us. It is true that the sum agreed upon is much less than that *demanded by the Claimants;* yet, with the proof now before us, it is quite as high as we could, with any reasonable hope, expect from the award of any disinterested tribunal.

I feel it due to the importance of the subject, as well as to the dignity of both Governments, to forward this despatch by a special Messenger; and knowing that Major Morgan can be of infinite service to you, in the investigation of the matter, I make him the bearer. He has aided me greatly in my investigations, and is quite familiar with the history and merits of each particular claim. I regret extremely to lose his assistance, but knowing his ability to aid you, I feel it my duty to spare him.

Major Morgan will carry with him either the originals or full minutes of all the evidence in my possession touching the claims, and it is therefore unnecessary that I particularly refer to it here.

Believing the terms of the adjustment highly advantageous to our Country, and to the Claimants, I of course feel very desirous that my action may meet the approbation of my Government, and as the matter, so far as the persons immediately interested are concerned, is purely one of dollars and cents, I enclose herewith a copy of my correspondence with Mr. Birckhead, Mr. Gardner, and Messrs. Maxwell, Wright & Co., the only American houses here in any way interested

[1] Regarding the change of "June" to "July", see the note on Article 5.

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in the settlement of the Claims. The correspondence referred to is marked A and B.

These gentlemen are persons of great intelligence—they have been the Agents of most of the heavy Claimants from the beginning of the controversy, and these circumstances, added to the fact of their being upon the spot, entitle their opinions to high consideration.

I hope you may not find it necessary to detain Major Morgan any considerable length of time, for it will be difficult, if not impossible, to find a gentleman here who will be able to supply his place. I have assured him that the Government would make him a reasonable compensation for his journey, and I have to request that you will arrange that matter with him whilst he is with you.

The correspondence of Tod with the three American houses mentioned in his despatch just quoted was of the same date as that despatch, January 27, 1849, as follows (*ibid.*, enclosures A and B):

[*Mr. Tod to the Agents of the Claimants*]

I have kept you advised, as Agents of many of the parties interested, of the steps heretofore adopted by me to secure the recognition and payment by the Imperial Government of the Claim pending against it on the part of citizens of the United States; and I now inform you that I have entered into a Convention with the Plenipotentiary of H.M. the Emperor, in effect as follows: The Imperial Government agrees to pay to that of the United States, upon the exchange of ratifications, the sum of five hundred and thirty thousand mil-reis, (said amount to bear interest from the first day of June [1] next,) which is to be taken in full satisfaction of all the claims that have hitherto been preferred against the Imperial Government by the United States.

Previous to communicating my action home, I should be pleased to be furnished with your views in the premises.

[*The Agents of the Claimants to Mr. Tod*]

We have received your note of this date, and in reply thereto it affords us pleasure to say that we fully approve of the Convention entered into between yourself and the Minister for Foreign Affairs; and we unhesitatingly express the belief that no arrangement can ever be made on more advantageous terms to the Claimants.

Should not this Convention receive the approval of our Government, the strong probability is that a settlement can never be made without an appeal to force.

We are aware that the sum agreed upon is much less than the amount nominally claimed, but we are no less sensible that some of the Claims preferred, if possessed of merits, are monstrously exaggerated.

The following account of the negotiations from August 1847 is from the Morgan report of April 3, 1849 (hereinafter cited):

From the time of his arrival, in August, 1847, to the period of signing the Convention for the settlement of the claims, Mr. Tod was obliged to treat with five different Ministers of Foreign Affairs, there being as many changes of Administration in Brazil, in the space of eighteen months. Believing that the claims had been discussed on paper long enough,—argument being heaped upon argument by both Mr. Hunter & Mr. Wise, and which resulted at first in procrastination, and at last in denial,—Mr. Tod determined to rely chiefly upon frequent personal interviews, thus pressing the subject constantly and urgently upon the attention of the several Ministers, which enabled him to ascertain

[1] Regarding the change of "June" to "July", see the note on Article 5.

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their views, and meet their objections, without the annoying and disheartening delays which had hitherto characterized the negotiation. With the first of those gentlemen, Saturnino de Souza e Oliveira, he succeeded in entering into a preliminary arrangement for the reference of our claims to a mixed commission, whose duty it should be to decide upon the merits of each. Before, however, this agreement was consummated, Mr. Saturnino informed Mr. Tod that the Council of State would not consent to this Convention until after the adjustment of the Lieut. Davis affair. Against this postponement, our Minister protested in strong language, but soon Mr. Saturnino went out of office, and was succeeded by a gentleman whose official tenure was so brief as to render it impossible to accomplish any thing in the way of negotiation. The next Minister in order was Antonio Paulino Limpo de Abreu, upon whom Mr. Tod pressed the fulfilment of the agreement entered into with Mr. Saturnino. Mr. Limpo de Abreu objected to that arrangement, as being disrespectful, by implication, to various legal tribunals and distinguished lawyers of Brazil, who had already pronounced adversely upon many of these same claims. He consented, however, to refer the cases to a confidential officer, who should examine them, and report to him upon the merits of each; and, when such report should be made, to propose, for Mr. Tod's acceptance, a round sum, to be received by the United States in satisfaction of all of their outstanding claims. To this proposition, Mr. Tod assented, and thereupon furnished the Foreign office with all the information in possession of the Legation, which could have a favorable bearing upon the question. Mr. Limpo de Abreu retired from the department before the Confidential Agent had reported, and was succeeded by a gentleman with whom no progress was effected, and who, in turn, soon gave way to the Viscount de Olinda, formerly a Regent of the Empire. This Minister yielded acquiescence in the mode of settlement arranged with Limpo de Abreu, feeling constrained to do so, as he declared, by the pledge given by his predecessor. Mr. Duarte da Ponte Ribeiro, a gentleman in the Foreign office, and chief of the division having this branch of American affairs under his charge, was the person selected to examine the claims. He made report on the 9th of December last, and on the 18th of that month, the Viscount de Olinda sent a copy thereof for the examination of Mr. Tod, which the latter acknowledged, barely adding that he was gratified to perceive that the argument of Mr. Ribeiro was not indorsed by the Minister of Foreign Affairs,—considering it preferable to point out its errors in a personal interview, rather than to open a correspondence which would inevitably result in delay. Mr. Ribeiro's report was unfavorable in every particular; yet, on the 27th of January last, a Convention was signed for the settlement of the claims, upon terms which receive the unqualified approbation of the American merchants in Rio de Janeiro, who have acted as Agents of nearly all of the principal claimants.

It will be remembered that the Imperial government has uniformly and pertinaciously insisted that each and all of the claims now provided for are unjust and unfounded; and never before has it consented to give a farthing in satisfaction of either or of all. This happy conclusion of a twenty years negotiation, has been accomplished in a manner to unite the two countries still more closely in the bonds of friendship and of peace.

Tod's despatch of January 27, 1849, with the convention, was carried to Washington by Major Thomas Jefferson Morgan,[1] Secretary of Legation, as bearer of despatches; with him was sent to the Brazilian Legation at Washington the ratification of the convention by the Emperor of Brazil, of even date therewith; Morgan left Rio de Janeiro on January 28 (D.S., 17 Despatches, Brazil, No. 35, January 27, 1849, postscript and enclosure C); but the passage to New York was "uncommonly tedious, owing to severe weather", and he did not deliver his despatches at Washington until shortly after the adjournment (March 23) of the special session of the Senate held at the

[1] Major Morgan later returned to his post, arriving at Rio de Janeiro on July 29, 1849, and died there of yellow fever on March 30, 1850.

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beginning of the Taylor administration (see *ibid.*, No. 40, August 23, 1849, and D.S., 15 Instructions, Brazil, 167–68, May 23, 1849); not until the regular session of Congress, beginning on the following December 3, was it possible to submit the convention to the Senate.

Execution of the Convention

By instruction of January 21, 1850, Tod was informed of the exchange of ratifications of the convention and of its proclamation and was furnished with a full power to receive the stipulated sum of 530,000 milreis and interest; and he was further directed to remit the money, when received, "to the Secretary of the Treasury in such funds as in your judgment would be most advantageous to the parties interested" (D.S., 15 Instructions, Brazil, 170–71). The full power was in this form (D.S., 3 Credences, 332):

Zachary Taylor. President of the United States of America.

To all to whom these presents shall come, Greeting.

Know ye, that reposing special trust and confidence in the prudence and integrity of David Tod, accredited as Envoy Extraordinary and Minister Plenipotentiary of the United States to His Majesty the Emperor of Brazil, I have invested him with full and all manner of power and authority for and in the name of the United States, to demand, receive and give acquittances for the sum of five hundred and thirty thousand mil reis, current money of Brazil, and the interest thereon which, pursuant to the first and fifth articles of the Convention signed at Rio de Janeiro on the twenty seventh of January last, the ratifications of which were exchanged in this City on the eighteenth instant, are payable by the Government of Brazil to that of the United States.

In Witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed. Done at Washington, the (Seal) twenty first day of January in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States the seventy fourth.

Z. Taylor

By the President,
John M. Clayton,
Secretary of State.

Tod communicated the facts (of which the Brazilian Government had previously been informed by its Minister at Washington, Sergio Teixeira de Macedo) and his full power to the Minister and Secretary of State for Foreign Affairs, Paulino José Soares de Souza, by note of April 2, 1850 (D.S., 18 Despatches, Brazil, No. 55, April 12, 1850, enclosure). The necessary appropriation was made by the General Legislative Assembly shortly before its adjournment on the following September 11 (*ibid.*, No. 64, September 17, 1850).

On September 27 and 28 the payment was duly made at the Brazilian Treasury, and the money was deposited by Tod in the Banco Commercial. In despatch No. 66, of October 1, 1850 (*ibid.*), is the following account of the proceedings:

I take great pleasure in advising you that I have secured the money due the United States from Brazil, by the terms of the Convention between the two Governments of the 27th January 1849.

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On the morning of the 27th ulto. I received the note from the Minister, a Copy of which is enclosed, marked "A", advising me that the Treasury were prepared on that day to make the payment.

Accompanied by Mr Yates the acting Secretary of this Legation I repaired immediately to the Treasury. We found the Officers engaged in Counting the funds, This engaged them until about 2 PM, when the Treasurer formally tendered the sum of Five hundred and twenty four thousand, four hundred and sixty six milreis (524:466$000) in paper, Forty five thousand (45:000$) milreis in Gold, and Eight hundred and forty nine reis in Copper, making in the whole, the sum of Five hundred and Sixty nine thousand, four hundred and sixty six mil, Eight hundred and forty reis, say 569:466$849.

This was the sum due by the terms of the Convention—viz. Five hundred and thirty thousand milreis with Interest from the first day of July 1849. We computed Interest for One year and Eighty Eight days.

The hour was now too late to think of completing the business this day. I therefore counted and received One hundred thousand milreis, for which I gave a loose receipt, and then left with the agreement to call and finish the business the next day. This sum I immediately deposited in the "Banco Commercial" (the only Bank in this City,) and took a certificate therefor.

On the next day the 28th (Saturday) Mr Yates and myself repaired to the Treasury again, when we finished counting the money, I then received the balance, took up my loose receipt, and gave one in full of the sum, as of the day before. This I also placed in Bank.

By reference to my Correspondence with Mr Clayton you will learn that we contemplated making an arrangement with the house of Maxwell Wright & Co by which they would give me bills upon the house of Alexander Brown & Sons of Baltimore for the whole fund. I have endeavoured to make such an arrangement, but have been unable to do so. The best offer the house made me was at the rate of 1850 reis to the dollar, and this only for a part of the sum. Exchange at this date upon London is 28½d for the milrei, and I see no reason why it should go below that sum.

Assuming Exchange between New York and London at par (that is $4.84 for the pound) we realize a dollar for about 1740 reis. Thus to accept the offer of Messrs Maxwell Wright & Co we would loose 110 reis on each dollar. By taking a few months time to make the remittance I hope to be able to send the whole fund home on terms as favourable as 1740 reis for the dollar. Thus making the fund realize to the claimants at home 327:279$^{7}/_{100}$ dollars.

From the best means in my power to judge, I have supposed that it would require from three to four months to make the remittance: and that the fund should not be entirely idle, I have made the deposit as follows: One hundred thousand milreis payable at sight, and the balance, in three equal sums at 30. 60 and 90 days. Upon these time deposits the bank pay me interest at the rate of four per cent per annum: deducting however the sum of about 500 reis on each thousand milreis, for stamp duties, upon their bills or Certificates for the money. The notes bear date of yesterday.

To keep you fully advised of my action in the premises, I will forward you Copies of all my Communications to the Secretary of the Treasury. I now enclose to you a communication to that officer, as well as a Copy thereof Marked "B".

On the same date as that of the foregoing despatch, October 1, 1850, Tod commenced his remittances to the Secretary of the Treasury (Thomas Corwin), to whom he thus reported upon the method (*ibid.*, enclosure B):

The remittance will be made principally by Sterling Bills upon Bankers in London. It would be idle to attempt to remit in specie, & there is but a small amount of Exchange to be had upon the United States. There is however a large amount done upon London, and by taking a few months time in making the remittances, I shall be able to do the business upon advantageous terms. Exchange upon London for first class bills, at this time is 28½d p milrei.

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Tod's statements of the remittances are in enclosures to six of his despatches (Nos. 66, 67, 69, 71, 73, and 77, of October 1, 10, 19, and 23, November 8, and December 15, 1850; D.S., 18 Despatches, Brazil, except No. 77, in D.S., Legation Archives, Brazil, Despatches, 1847–53).

By December 12, 1850, the remittances were completed. In his accounting, Tod charged himself as follows:

Amount received	569, 466$849
Interest received	2, 117$519
Total	571, 584$368

The amounts of remittances were credited by Tod as follows:

Draft on Baltimore for $3,249.90	5, 654$826
Salary payment of $1,000.00	2, 000$000
Bills on London for £65,077 10s. 2d	543, 929$091
Total	551, 583$917

Except for £874 15s. 10d., the bills on London were at sixty days' sight; they were negotiated at the rates of 30d. per milreis for £4,889 8s., of 29d. for £14,000, and of 28½d. for the remainder.

The above figures of the accounting show a balance of 20,000 milreis, or say $11,500. This was a commission of 3½ percent charged by Tod to "indemnify myself for the responsibility & Expense to which I am subjected in receiving & remitting this fund"; the figure of 3½ percent was taken by Tod as the lowest suggested in letters to him from three individuals in Rio de Janeiro to whom he had written on the subject; two of those persons were agents for the claimants (*ibid.*).

The Secretary of the Treasury objected to the charge as illegal (*ibid.*, letter of Tod of May 6, 1851); but it does not appear that any part of the commission was paid into the Treasury. The successor of Tod as Minister at Rio de Janeiro, Robert C. Schenck, arrived there on the following July 26 (D.S., 18 Despatches, Brazil, No. 94, August 5, 1851), and Tod left for the United States via Europe on September 14 (*ibid.*, No. 96, November 9, 1851). Under date of February 26, 1852, the Secretary of the Treasury wrote "that the whole amount realized from the Bills, principally on London, remitted by Mr. Tod, the late Minister of the U. States at Brazil is $322,535.98" (D.S., Brazilian Claims, Miscellaneous, envelope 1, folder 2); and this was taken throughout the subsequent proceedings as the total available under the convention.

One may deduce from the figures stated that the commission charged by Tod had not been received by the Treasury; apart from the small dollar remittances credited by Tod ($4,249.90), the Treasury fund was $318,286.08; Tod sent London bills for £65,077 10s. 2d., which, at the rate current at the time (1850–51), say 4.89, would have realized slightly over $318,200, or approximately the sum in question.

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ARTICLE 3

By an instruction of August 17, 1850, Tod was directed to invite the attention of the Brazilian Minister of Foreign Affairs to Article 3 of the convention and to request the carrying out of the stipulation for the delivery of the relevant documents to the Government of the United States (D.S., 15 Instructions, Brazil, 176); the request was duly made by note of November 7 and was responded to by note of November 14 (D.S., 18 Despatches, Brazil, No. 74, November 18, 1850, enclosures A and B). To the note of November 14 of the Brazilian Minister for Foreign Affairs, Paulino José Soares de Souza, are appended three lists; in the first of these are enumerated some twenty-seven documents which accompanied the note, relating to seven vessels; the other two lists are of papers previously returned or delivered to Tod; and it was said that the items of the three lists "are all which the Imperial Government have any knowledge of". With the despatch last cited, the papers received from the Brazilian Government, "together with all that I find upon the files of this Legation that in any way relate to the claims", were transmitted.

ARTICLE 5

By Article 5 of the convention it is provided that the stipulated sum of 530,000 milreis should not be paid until the receipt at Rio de Janeiro of notice that the exchange of ratifications had taken place at Washington and that the sum named should bear interest at 6 percent "from the first day of July next". In the original convention, as signed and transmitted to Washington, the month was written "June" and not "July"; and similarly the Portuguese version, both in the original convention and in the text embodied in the Brazilian instrument of ratification, had "Junho" and not "Julho". Tod wrote on the subject of the error as follows (D.S., 17 Despatches, Brazil, No. 40, August 23, 1849; see also enclosures A and B to that despatch):

> From the enclosed copies of my correspondence with the Minister of Foreign Affairs, marked A and B, you will perceive that, owing to a misapprehension, an error crept into the fifth article of the Convention, which should be corrected. The article, as it now reads, provides for the payment of interest, upon the sum agreed upon, from the first day of *June*, when it should be *July*. The error was not discovered until after the Convention had been executed, and had received the approval of the Emperor, — it being upon the eve of Mr. Morgan's departure for Washington. In common with the Agents of the Claimants, I felt very desirous that the Convention should reach the seat of Government prior to the final adjournment of the Senate, and with this end in view, after the terms were agreed upon, it was executed with despatch. Had not his passage to New York been uncommonly tedious, owing to severe weather, Mr. Morgan would have reached Washington at a time sufficiently early for the accomplishment of the end desired. In the hope that he would find our Senate in session, and that he would be enabled to return with the Convention ratified on our part, by the first of June, (in which event the money was then to be paid,) we were unwilling to delay his departure, and therefore did not correct the error referred to. I have now to ask that, when under consideration in the Senate, the fifth article be so amended as to make the interest begin to run from the first day of July last.

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The error in Article 5 was corrected, but not, as Tod had suggested, by amendment in the Senate; the method adopted was alteration of the instruments. In the English version of the signed original, "June" was rewritten "July"; and in the Portuguese version thereof, and also in the Brazilian instrument of ratification, which has only the Portuguese version of the convention, "Junho" was made "Julho". No independent record of the correction has been found; but the two instruments mentioned show erasures where the three words were altered.

The amount involved in the correction was, say, $1,500, the approximate equivalent of thirty days' interest at 6 percent on 530,000 milreis.

The Claims

By Article 2 of the convention, the claims covered thereby were those which had been "presented by the Government of the United States up to the date of this Convention", January 27, 1849.

It will be convenient to consider the presented claims in connection with the result of their subsequent adjudication. To the Commission which sat under the act of March 29, 1850 (9 Statutes at Large, 422–23), and extensions thereof, there were submitted thirty-eight claims, as follows, six of which, Nos. 1, 2, 4, 5, 16, and 35, were deemed to be not within the terms of the convention (D.S., Record of the Proceedings of the Brazilian Commission):

Docket No.	Case	Claimed	Allowed
1	Bark *Sarah and Esther*	$17, 732. 30	----------
2	Hayes, Engerer & Company	$160, 000. 00 and Rs. 86, 329$732	----------
3	Brig *Toucan*	$24, 220. 59	$19, 453. 83
4	Sloop *Morning Star*	$10, 728. 00	----------
5	Bark *Yeoman*	$31, 397. 00	----------
6	Schooner *Shillelah*	$84, 625. 30	$74, 302. 69
7	Ship *Shamrock*	$81, 502. 83	$26, 977. 50
8	Schooner *John S. Bryan*	$11, 270. 25	$3, 249. 47
9	Ship *Shamrock*	$57, 587. 73¾	$23, 777. 80
10	Brig *Sally Dana*	$13, 023. 72	----------
11	Schooner *Hope*	$2, 292. 00	$1, 130. 40
12	Smack *Felicidade*	$25, 045. 07	$18, 453. 90
13	Brig *Aspasia*	$1, 030. 49	$2, 353. 81
14	Ship *Tarquin*	$37, 273. 15	$69, 869. 14
15	Ship *Canada*	$25, 827. 92	$1, 559. 78
16	Emanuel Gomez	$336. 00	----------
17	Wright and Houghton	$14, 678. 27	$14, 528. 37
18	Bark *Navarre*	Rs. 275$400 and interest	$196. 99
19	Bark *Globe*	Rs. 278$100	$199. 22
20	Ship *Louisiana*	Rs. 400$000	$577. 94
21	Ship *Florence*	Rs. 1, 393$000 and interest	$1, 453. 43
22	Bark *Mystic*	$31, 401. 50	$30, 656. 75
23	Isaac Austin Hayes	$90, 000. 00 and Rs. 12, 549$940	$1, 000. 00

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Docket No.	Case	Claimed	Allowed
24	Brig *Brutus*	Rs. 35, 177$000	$38, 655. 83
25	Captain William Wolfe	Rs. 745$050 and $500	$2, 150. 27
26	Brig *Casvian*	Not stated	$54, 632. 95
27	Brig *Sally Dana*	$7, 750	----------
28	Joseph Ray	Rs. 642, 645$573	----------
29	Brig *Argus*	$8, 445. 95	----------
30	James Smith	$11, 500. 00	$965. 00
31	Ship *Erie*	Rs. 769$920	$1, 138. 83
32	Lemuel Wells	$1, 823. 65	----------
33	Ship *Cincinnatus*	Not stated	----------
34	Brig *Zaine*	Rs. 72$450	$53. 30
35	Bark *Wave*	Rs. 150$000	----------
36	Steam schooner *Amazon*	$107, 812. 84 and interest	$30, 229. 80
37	Steam schooner *Amazon* cargo	$29, 446. 65 and interest	----------
38	Brig *Orient*	$264. 11	$506. 65

The presented claims were the subject of an elaborate report to Secretary of State Clayton by Thomas Jefferson Morgan, Secretary of Legation at Rio de Janeiro, dated April 3, 1849, and written at Washington; that report, of some 293 manuscript pages (bound) is the chief source for the discussion here; it is entitled "Report upon the Claims preferred by the United States, on behalf of their Citizens, against the Imperial Government of Brazil:—being a glance at the past negotiations respecting them, a brief history of each, and a summary sketch of the evidence adduced in support thereof:—Prepared and submitted under instructions from the Hon. John M. Clayton, Secretary of State, by Thomas J. Morgan, Secretary of the Legation of the United States, near the Court of H.I.M. the Emperor of Brazil."

The Morgan report was based on the instructions, the diplomatic correspondence, the claims papers on file at the Legation, and a report on the merits of the presented claims made by an official of the Brazilian Foreign Office, Duarte da Ponte Ribeiro, dated December 9, 1848, a manuscript of 86 pages (D.S., 17 Despatches, Brazil, No. 34, January 11, 1849, enclosure A).

The following paragraph referring to the claims in general is excerpted from the Morgan report:

> The belief on the part of the Imperial government, that the claims preferred by the United States are unjust, is set forth in the preamble to the Convention. I am forced to admit that such is considered the honest conviction of most Brazilian statesmen. When the cases are examined, and the deplorable evidences of perjury are discovered upon the face of papers brought in support of some of them, it will not appear strange that the really just & meritorious claims have become tainted by the contact. And, I will be pardoned by those familiar with the subject, for respectfully intimating, that this result has been partially produced, by cases having been presented, without first ascertaining something in reference to their legality and justice. It will be seen hereafter, that I venture

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to express the opinion that one of the claims preferred against Brazil, is founded upon a slave voyage. The delicacy of making this suggestion, after the evidence relied upon to substantiate its accuracy, has passed through the hands of able and experienced gentlemen, is fully appreciated; but a sense of duty will not permit me to withhold my honest conclusions, particularly since, if they are erroneous, the mode of communicating them can work no injury to the parties at interest. I think there cannot be a doubt that, in the case of the Sally Dana, our government has unconsciously lent its sanction to the promotion of a claim based upon a traffic which christendom has branded with the odious name of piracy.

In a despatch dated only sixteen days before the signature of the convention, Tod wrote that many of the claims were exorbitant and that some had no foundation at all (D.S., 17 Despatches, Brazil, No. 34, January 11, 1849).

The names and categories of the presented claims are thus set forth in the introductory portion of the Morgan report:

When Mr. Tod entered upon the discharge of the duties of his mission, he ascertained that the following cases of Claims had been treated by his predecessor as still pending against the Brazilian government, to wit:

First:—For damages and losses resulting from the war between Brazil and Buenos Ayres, known as the Prize Claims:—The cases of the Caspian, the Brutus, the Felicidade, the Shamrock, and the Shillelah.

Second:—For damages occasioned by the seizure and condemnation of a vessel at Rio de Janeiro:—The case of the Mystic.

Third:—For damages resulting from the detention of vessels:—The cases of the Aspasia, the Argus, and the Toucan.

Fourth:—For interest accruing after the acknowledgment of the principal of a claim:—The case of the John S. Bryan.

Fifth:—For the restitution of anchorage duties and port charges:—The cases of the Zaine, the Navarre and the Globe.

Sixth:—For the restitution of provincial duties and taxes:—The cases of Lemuel Wells, and of Mendez & Season.[1]

Seventh:—Claims arising under the crown of Portugal:—The cases of the Sally Dana and the Tarquin.

Eighth:—For damages induced by the Brazilian government, under contract:—The case of the New York South American Steam Boat Association.

Ninth:—For damages occasioned by imprisonment, confiscation of property, and other wrongs:—The cases of Joseph Ray and of Isaac Austin Hayes.

Tenth:—For the restitution of Fines:—The cases of the Mary, the Louisiana, the Ohio, the Canada, the Florence, and the Hope.

Eleventh:—For payment of expenses incurred in consequence of the Act of the Imperial government:—The case of the Atlas.

Twelfth:—For the recovery of duties paid on re-exportation:—The cases of the Cincinnatus and the Erie.

Thirteenth:—For the recovery of duties where twice paid:—The case of the Orient.

The class of the presented claims which was deemed of the most importance was that known as the "prize claims", five in number; these were grounded on events of the war of 1825–28 between Brazil and Buenos Aires; claims of that period were among those which were the subject of the settlement of June 15, 1829 (Document 65), made on behalf of the United States by William Tudor, Chargé d'Affaires at Rio de Janeiro; and others of the same general nature were adjusted

[1] The spelling of these two names is uncertain.

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in 1833 and 1834 with the successor of Tudor as Chargé d'Affaires, Ethan A. Brown (see the notes to Document 65). Of the five prize claims within this convention of 1849, four (all but the case of the *Shamrock*) had been considered by Tudor and had been more or less unfavorably commented on by him (see the "Statement of the claims . . .", enclosure to despatch No. 125, of April 18, 1829, in D.S., 6 Despatches, Brazil); in the paper cited, the claims were considered under four heads as those "finally liquidated", "adjusted for liquidation", "suspended", and "not presented"; when the correspondence of Tudor was published in 1837, only the first two heads of that paper were included (House Document No. 32, 25th Congress, 1st session, serial 311, pp. 158–61); but other comments of Tudor were then made available (e.g., *ibid.*, 51–52); and Morgan thought that "perhaps, no single cause has contributed more to the oft repeated denial of our right to indemnity, than the injudicious publication of those portions of his [Tudor's] correspondence".

Following that publication and pursuant to an instruction of June 1, 1838 (D.S., 15 Instructions, Brazil, 54), correspondence with the Brazilian Foreign Office and with his own Government regarding the prize claims was carried on (1839–43) by William Hunter, Chargé d'Affaires and from September 13, 1841, Minister at Rio de Janeiro; the successor of Hunter as Minister, George H. Proffit (1843–44) intermitted the diplomatic correspondence, which was resumed by his successor, Henry A. Wise (1844–47), but without result.

The five prize cases were the *Caspian*, the *Brutus*, the *Felicidade*, the *Shamrock*, and the *Shillelah*. The records of the adjudicating Commission contain no reasoned opinion or discussion by the Commissioner of the merits of any of the prize cases, except in respect of rejected items of the claims. In a letter dated January 10, 1851, the Commissioner wrote that the prize claims "originated upwards of 20 years ago during the War between Brazil and Buenos Ayres by reason of captures made by the Imperial blockading squadron of American Vessels for alledged attempts to enter the Ports of Buenos Ayres in violation of the law of Blockade" (D.S., Letter Book, Claims on Brazil, 23–25, George P. Fisher to Walter Underhill; printed in Moore, International Arbitrations, V, 4612–13); but that statement is correct as to three only of the five prize cases. As will be seen, two of them, the *Felicidade* and the *Shamrock*, were not cases of alleged breach of blockade; the *Felicidade* was not an American vessel, and the *Shamrock* claim arose from damage in the port of Montevideo.[1] The five prize claims were all allowed by the adjudicating Commission in amounts aggregating $238,950.94, more than 57 percent of the total allowances of $418,073.65.

The "Caspian" (No. 26)

The brig *Caspian* reached Montevideo on September 8, 1827, and cleared from that port for Valparaiso on September 29. Her register

[1] During the period of the origin of the prize cases, Montevideo was held by Brazil.

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was endorsed to the effect that all ports of Buenos Aires were in a state of blockade. The master shaped his course up the Rio de la Plata "to obtain correct information relative to the blockade", and the vessel was taken on October 2, 1827, ten miles north of Ensenada. The vessel and cargo were condemned. On July 8, 1828, notice of the claim was given by the agent therefor to Tudor, who declined to present it. On January 31, 1836, the claim was presented to the Imperial Government by Hunter and received an unfavorable decision from the Minister of Foreign Affairs. The amount of the claim, as stated by the agents on November 5, 1847, including interest, was Rs. 111,680$650.

The "Brutus" (Nos. 24 and 25)

The brig *Brutus*, William Wolfe, master, on September 14, 1827, cleared from Santos for the island of Santa María, Chile, with a cargo of sugar, tobacco, and other merchandise. On September 28 she made for the Plata because, according to the protest, the master "found it necessary to put into the nearest port for supplies". A letter of the owner dated December 17, 1843, said that the brig had orders to attempt the port of Buenos Aires or Ensenada. According to the Ribeiro report, the *Brutus* was chased by one of the blockading vessels, ran aground near Ensenada, and was burned by direction of Brazilian naval officers. The cargo was mostly British, and a claim therefor was paid by the Government of Brazil, but under protest. Tudor had "no doubt of this being covered property" and declined to present the claim. When subsequently presented by Hunter, the claim was rejected by the Brazilian Government, which held that the destruction of the vessel was justified on the ground that the voyage was illegal and fictitious from the beginning, that no previous warning of the existence of the blockade was necessary, and that the vessel sailed knowing the blockade to be in force and with an intention to break it. The amount of the claim was stated by the agents therefor on November 5, 1847, including interest, at Rs. 83,821$414.

The "Felicidade" (No. 12)

This was a case of cargo, as the smack *Felicidade* was under the flag of Buenos Aires. It appears that the *Felicidade* sailed from Rio Salado in June 1828 and was seized on June 24. Her cargo of jerked beef and horns was stated to belong to the owners of the American schooner *Francis*. According to the report of Tudor, after the vessel was taken into Montevideo and detained four months without being brought to trial, an offer was made to restore the cargo if claim for damages was relinquished. This, however, was refused by the master, who abandoned the cargo because of decay. It seems that on a subsequent trial the cargo was condemned. Tudor suspended the case for further proof of ownership. The claim was subsequently presented to the Brazilian Government pursuant to an instruction of December 17, 1834 (D.S., 15 Instructions, Brazil,

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15–16). In that instruction it was said that as the cargo was condemned prior to the treaty with Brazil of December 12, 1828 (Document 64), the rule of international law that the goods of a friend in the vessel of an enemy shall be free was applicable. When the claim was presented by Hunter, the answer of the Brazilian Foreign Office was to the effect that there had never been any proof of American interest in the cargo, that there had been two decisions of courts against the claim, and that the view of public law put forward was erroneous since the United States had stipulated and contended for the rule that free ships make free goods and therefore must be bound by the opposite rule that enemy ships make enemy goods. The amount of the claim, as stated by the agent therefor in October 1847, including interest, was Rs. 50,941$903.

The "Shamrock" (Nos. 7 and 9)

The ship *Shamrock*, of 260 tons, sailed from Rio de Janeiro for Valparaiso on September 8, 1827, and on account of bad weather put into Montevideo in distress on the following November 16. At the time the Brazilian Government prohibited neutral vessels from sailing from Montevideo unless bond was given that they would not go to any port of the Republic of Buenos Aires. As such security was not given (because, according to the master, he was unable to furnish it), the *Shamrock* remained in the harbor and on February 12, 1828, was greatly damaged by lightning. The ship and cargo were sold after survey for comparatively small sums. The claim was for the loss and, as stated in October 1847, with interest, expenses, etc., came to $68,246. By an instruction of April 1, 1828 (D.S., 12 Instructions, U.S. Ministers, 88–89), Tudor had been directed to remonstrate with the Brazilian Government against the regulation for exacting bonds from neutral vessels clearing from Montevideo, which was said to want both principle and precedent. In the Ribeiro report, it was said that the claim was greatly exaggerated, that it had not been pressed until 1836, that it was the lightning and not the requirement of the bond which retarded the departure of the ship, and that the delay in the selling of the ship and cargo until April 1829 was the fault of those having control of the vessel.

The "Shillelah" (No. 6)

The schooner *Shillelah* sailed from Baltimore on October 18, 1827, put in at Bahia on the following December 4 for repairs, and cleared from Bahia on December 12 for Valparaiso with permission to touch at any southern port of Brazil. The master, according to his protest, was spoken by one Brazilian vessel of war and boarded by another, but "by neither of these vessels was he informed of the existence of the blockade of the ports of Buenos Ayres". In the same paper, he declared that he bore up the Plata to procure firewood, the supply of which was exhausted, and also to obtain water; that he saw several sails astern on December 29, when he was off the Salado, and a brig and a schooner brig steering the same course as himself; that he was

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boarded by a prize brig from Buenos Aires and was informed of the existence of the blockade at that port by the Brazilian squadron; that on the next day, while coming down the river, he was stopped by a Brazilian vessel and ordered to the blockading squadron; and that an officer from that vessel informed him that she was the Brazilian imperial schooner *Principe Imperial,* bound to Buenos Aires under a flag of truce.

When the claim for the *Shillelah* was rejected by Brazilian Commissioners in May 1829, Tudor withdrew the case and referred it to the consideration of his Government. In his "Statement of the claims" (cited above), he had reported on the case of the *Shillelah* as follows:

> This vessel during the blockade of Buenos Ayres, took a cargo on board at Bahia, cleared for Chile & sailed for B^s^ Ayres. She is a very fast sailer, was chased a long time by the Brazilian squadron and escaped. In going up the river she met one of the squadron coming down, from which she could not escape & was captured. The reasons for the condemnation were, that she had warning by the previous chase, that she was destined for a privateer, for which purpose she had an armament on board for twenty five men, muskets, pistols, sabres & a small quantity of gunpowder, & cannon in her hold, one of which was a long gun to mount on a pivot, and she sailed with the express purpose of violating the blockade, & to be afterwards commissioned as a privateer, for which she had an armament prepared. The property is I believe American; & I have suspended it for further orders.

When the claim was again presented, on December 20, 1839 (D.S., 12 Despatches, Brazil, No. 101, December 29, 1839, enclosure), by Hunter, pursuant to a discretionary instruction of December 26, 1837 (D.S., 15 Instructions, Brazil, 51–52), he argued that the *Shillelah* was captured for a pretended breach of blockade without any previous legal warning; that the capture was not only illegal but in a certain sense absurd because made with a flag of truce; that by the law of nations that which could not herself be captured could not capture another; that the belligerent who, by the flag she bore, was prohibited from hostilities, could not rightly capture an enemy and could not *a fortiori* capture a neutral; and that in this case the capture was a nullity or trespass and gave no right of jurisdiction to a prize court. In the Ribeiro report, it was pointed out that the *Shillelah* had been only seventeen days at sea when she put in, according to the protest, for water and supplies; that the articles of war and the letters which had been found on board established that she was to be sold in Buenos Aires; and that a flag of truce affects only the belligerent who is obliged to respect it and does not lessen the duty of the neutral vessel to respect the blockade or the right of the blockading vessel to seize it.

Among the papers in the case were twenty-six bills of lading, of which sixteen specified Buenos Aires as the port of destination. Also among the papers was a letter of instructions to the supercargo and the master, dated at Baltimore October 13, 1827, directing the sale of the *Shillelah,* enclosing a power of attorney for effecting the transfer, and fixing the price.

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The amount of the claim, as presented by the agent therefor at the end of the year 1846, including $69,764.78 interest, was $104,206.41.

The "Mystic" (No. 22)

The bark *Mystic* was originally under the British flag but was sold at Key West for salvage. She arrived at Rio de Janeiro from Bahia under the American flag in December 1837. The American consul, discovering that the *Mystic* had not the necessary papers, informed the Brazilian authorities, whereupon the vessel was seized and, after investigation, condemned.

On December 30, 1837, the master, Benjamin F. Clark, deposed before the American consul that he had been one of the owners of the *Mystic*; that she had been sold on December 28, 1836, to Gantois & Martin, of Bahia; that, as the purchasers were foreigners, the transfer was made to Fortunato Figueira to cover the property and to hold the same for the owners; and that the deponent saw Gantois pay part of the purchase money and knew that he had paid the rest. On January 30, 1839, the same Clark made affidavit in New York that he had never been part owner of the vessel, that he was not present when she was sold, and that he never saw any part of the purchase money paid. Other affidavits supported the ownership by Figueira, who was a naturalized citizen of the United States; Gantois was a Frenchman residing in Bahia. Among the papers in the case were an insurance policy wherein the vessel, tackle, etc., were valued at $11,000, and an agreement for the freight of the vessel from Bahia to Trieste and return for £4,000, in which Gantois & Martin were named as "consignees of the American bark Mystic". An instruction of March 7, 1839 (D.S., 15 Instructions, Brazil, 55–56), authorized Hunter to demand the restitution of the vessel with damages if, after examination of the papers, "you should then be of the opinion that there is just cause of complaint . . . and that redress may with propriety be sought through the diplomatic channel".

In the Ribeiro report, it was said that the papers showed that the vessel was of French ownership and was navigated illegally, and that, even if it had been proven that the *Mystic* was American property and had sailed regularly, it would not follow that any obligation devolved upon Brazil to deliver up the vessel, which had been seized on information given by the appropriate consul, or to pay its value; and it was pointed out that any liability could not extend beyond the valuation in the insurance policy, which was higher than that in the bill of sale.

The amount of the claim, as presented by the agents therefor, was, including interest to January 1, 1848, Rs. 109, 129$000.

The "Aspasia" (No. 13)

In the Morgan report, the following is quoted from the protest of the master of the brig *Aspasia*, 207 tons, made at Rio de Janeiro on October 5, 1830:

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That he sailed from Baltimore, bound direct for Cadiz, with his manifest and bill of health certified by the Spanish Consul, but finding he could not sell his cargo to advantage in Cadiz, he determined to proceed to this port, and as there are no Brazilian Consuls in Spain, he brought with him a certificate from the health officer & harbor master, the only local authorities with whom he held communication, (Cadiz being a free port, has no Custom House,) stating that he made no discharge there, and that he cleared with his original manifest for Rio de Janeiro. That upon arriving at this port, he entered his vessel at the Custom House, & proceeded to discharge her cargo; that after he had landed all his cargo, he applied for permission to receive the proceeds on board in the produce of this country, which was denied him, & he was ordered to leave the port immediately; that he then applied to the superior authorities, and after a detention of thirty-one days, he was admitted to a full entry, and given permission to receive cargo.

The claim for demurrage, etc., for thirty-one days (as stated on September 28, 1830) came to $1,030.49.

When the claim was presented in 1831 and 1832, the Brazilian Government replied that it was unjust, inasmuch as the delay had arisen from the time necessary to prosecute the inquiry.

The opinion of the Commissioner supporting the claim is in D.S., Letter Book, Claims on Brazil, 162–64 (printed in part in Moore, International Arbitrations, V, 4614).

The "Argus" (Nos. 29 and 30)

Porto Alegre is at the head of a narrow bay in the Province of Rio Grande do Sul. In 1835–36 that Province, or the greater part of it, was in rebellion against the Government of Brazil. The town of Rio Grande, however, which is at the entrance of the bay from the sea, was in the possession of the imperial authorities.

The brig *Argus* sailed from New York on February 14, 1836, with an assorted cargo of merchandise, bound to Porto Alegre. On reaching Rio Grande on April 17, the *Argus* was detained in the custody of the authorities until the following September 6, when permission was granted to proceed to Porto Alegre. It was also alleged that the agent of the brig, James Smith, was similarly detained at Porto Alegre. The claim for the detention of the brig and cargo, as stated in 1837, amounted to $8,445.95 and included damages for the cargo of the brig *Sophia and Eliza*, the relation whereof to the case does not clearly appear. The claim on behalf of James Smith was for $11,500.

In an instruction to Hunter of March 9, 1839 (D.S., 15 Instructions, Brazil, 56–57), it was said that if the detention of the vessel was only such as was necessary to prevent her commander from prosecuting his voyage to Porto Alegre, those who complained of having suffered by the detention could not justly expect damages therefor from the Government of Brazil, but that if the vessel had been restrained from proceeding to any other port of Brazil where foreign trade was permitted by the laws of that country, or from going to any other port of the globe, the Brazilian Government was to be deemed accountable under Article 7 of the treaty of December 12, 1828 (Document 64).

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The claim for the brig *Argus* was not allowed; for the reasoning of the Commissioner, see D.S., Record of the Proceedings of the Brazilian Commission, 177–81; also Moore, International Arbitrations, V, 4623. The claim of James Smith was allowed in the sum of $965.

The "Toucan" (No. 3)

This claim was in some respects similar to that in the case of the *Argus*. An instruction from Secretary of State Forsyth to Hunter of March 13, 1839, thus dealt with the case of the brig *Toucan* (D.S., 15 Instructions, Brazil, 57–61):

it has been ascertained

1. That the revolution or insurrection at Porto Alegre began on the 20th of September, 1835.

2. That in consequence thereof, the authority of the Imperial government was virtually suspended at that place and elsewhere in different parts of the province of Rio Grande do Sul, from that time until the 15th of June, 1836, when Porto Alegre was taken possession of by the Imperial forces under the command of Marshal Barreto.

3. That by an Imperial decree of the 3d of March, 1836, that port was closed to navigation until lawful order should have been restored there.

It appears from the first protest of captain Hamlin that the Toucan was detained at Rio Grande from the 13th of February to the 2nd of March, 1836, by order of Ribeiro, the Imperial President, for the alleged reason that Porto Alegre was in the possession of the insurgents. It is believed that Ribeiro was at this time on board the ship of war the seventh of September, which, with perhaps other vessels, was engaged in blockading the entrance to the lake and river leading up to Porto Alegre. If, therefore, captain Hamlin persisted in his intention of repairing thither, and was permitted to do so, it was either on the ground of right or of special favor. In the latter case, the previous detention cannot be a cause of just complaint. If, however, he was prevented from going with his vessel to any other port of Brazil open to foreign commerce or to the ports of any other country, it is conceived that the 7th article of the treaty [1] entitles him to reparation. It does not appear from the papers, however, that he at any time renounced his design to proceed to Porto Alegre; on the contrary, they afford no reason to doubt that this plan was constantly cherished until he was suffered to carry it into effect, which Mr Peacock, in a letter to the department of the 17th of July, 1836, says was in consequence of the solicitation of Mr Hayes. Mr Hayes has stated here to me that he satisfied Mr Ribeiro that he had no right to detain the vessel. She arrived at Porto Alegre on the 15th of March. The second protest represents that the communication between that place and San Pedro do Sul having been cut off, no vessels were allowed to depart after the 5th of April, and damages for the detention from that time until the 5th of September are accordingly claimed. *How* the communication between those places was cut off, is not stated. If captain Hamlin entered by special favor he should not complain, for the permission to enter did not necessarily imply a privilege or right to depart. If he was detained by the insurgents at Porto Alegre, as he was duly apprised before he left Rio Grande, that that place was in their power, it is considered that the Imperial government cannot be held accountable so long as the insurgent domination lasted. If, however, it should appear that he was forcibly detained from the 15th of June until the 5th of September, Porto Alegre having been within that period in the hands of the Imperialists, that government must be deemed bound to recompense him; for even the decree referred to closed that port only until order should be restored *there*, and although the rebels in the adjacent country may not have been subdued, we have a right to presume that order was restored in the City from the date of Marshal Barreto's entrance into it. If however the decree had shut Porto Alegre until the revolt in that quarter should have been completely quelled, we should still be entitled to damages for the detention of the

[1] Document 64.

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Toucan, within the period mentioned; for whatever right to embargo may be allowed by public law, the treaty expressly stipulates that it shall not be exercised without compensating those who may be subjected to it.

You are accordingly instructed to present this case to the Brazilian government and to demand redress with the conditions and limitations above set forth. The expectations of Captain Hamlin on this head must of course be modified by such facts as further inquiry on your part and a fair investigation on the part of the Brazilian government shall disclose. There are some items of the account, however, the payment of which certainly cannot be insisted upon without further proof. The original destination of the vessel was to St Catherine's and a market. It is acknowledged that a part of the cargo was landed at San Pedro [or Rio Grande] [1] do Sul. It is not averred or denied that the residue or any part of it was landed at Porto Alegre. If, however, it was discharged and disposed of there, the items for damages on detention of cargo, for depreciation in prices, and for interest on cargo would seem to be improper and, in any event, exorbitant.

There is one circumstance in relation to this case which, until explained, may tend to impair confidence in the allegations in the protests. It is averred in that made at Porto Alegre that no *armament, &c* was carried thither. It seems from the manner in which this statement is put forth, that it was intended to convey the impression that there was no merchandize contraband of war on board the vessel. The manifest and invoice, however, show that one thousand pounds of powder constituted a part of the cargo. Consequently, although it may have been true that no *armament* was carried to Porto Alegre, unless the *ammunition* mentioned was landed at Rio Grande or elsewhere, it must have been on board the vessel on her arrival at the former place. But even if it was, the Brazilian government cannot urge that fact in justification of the detention of the vessel any longer than may have been necessary to compel the landing of the powder, to be disposed of as the 18th article of the treaty [2] provides for contraband of war.

In a letter to Hannibal Hamlin, counsel for the claimants, dated May 22, 1851, the Commissioner, George P. Fisher, following the reasoning of the quoted instruction, ruled against the claim except for so much thereof as was for detention from June 15 to September 5, 1836 (D.S., Letter Book, Claims on Brazil, 56–65; printed in large part in Moore, International Arbitrations, V, 4616–17); but the final decision of the Commissioner (February 24, 1852) allowed the entire claim (apart from interest), except that one item of damage to cargo during the first detention of 17 or 18 days was reduced from $1,400 to $333.33; in other words, the principal amount claimed, $10,450.73, was allowed at $9,384.06; the interest claimed (partly at 18 percent), amounting to $13,769.86, was reduced to $10,069.77, making the total allowance of $19,453.83 (D.S. Record of the Proceedings of the Brazilian Commission, 5–13).

The "John S. Bryan" (No. 8)

This was a case for interest on a claim previously adjusted and for expenses incurred in connection therewith (see Document 102 and the notes thereto); the decision of the Commissioner is stated in a letter to Orasmus B. Matteson, counsel for the claimant, dated August 7, 1851 (D.S., Letter Book, Claims on Brazil, 117–20; printed in part in Moore, International Arbitrations, V, 4613–14).

[1] The brackets are in the source paper.

[2] Document 64.

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Refund of Anchorage Duties

There were three claims of this nature, originating in 1845 and amounting together to only $449.51, namely: the *Navarre*, the *Globe*, and the *Zaine*, Nos. 18, 19, and 34. It seems that they would have been paid if duly presented to the local authorities.

Lemuel Wells (No. 32)

Wells was consul at Santa Catharina (Florianópolis) in the Province of Santa Catharina and was engaged in business; in 1834 he claimed refund of taxes paid on the retailing of liquids and subsequently claimed restitution of a license fee of Rs. 80$000 payable annually by certain dealers under a provincial law. Wells considered that he was exempt from those levies because he was a consul. The claim was not allowed.

Mendez & Season

Whether there was in fact any claim in this case is at least doubtful. In a note to the Brazilian Foreign Office, dated September 10, 1844, Wise had argued on behalf of Mendez & Season, of Maranhão (São Luiz), that a provincial tax of 5 percent on cigars and tobacco was illegal and had asked that it might be suspended pending further examination (D.S., Legation Archives, Brazil, Communications to the Government of Brazil, 1835–44); there was some further correspondence on the subject; but it nowhere appears that the mercantile firm named had paid any such taxes. It was said in the Ribeiro report that, if such a claim existed, it could not exceed 2,305 milreis. No claim of the firm was submitted to the adjudicating Commission.

The "Sally Dana" (Nos. 10 and 27)

The brig *Sally Dana*, Thomas Ray, master, was owned by John B. Bernadou, Nicholas Obrie, and James S. Duval, of Philadelphia (D.S., Brazilian Claims, folder *Sally Dana*). In a letter to Secretary of State Van Buren from Bernadou, dated September 29, 1830 (quoted in the Morgan report), it was stated that on March 18, 1817, the *Sally Dana* was chartered by Joseph Bryan, the consignee, to the then existing Government of the Province of Pernambuco for a voyage (duly performed) to Mozambique and return; the amount to be paid under the charter party was 6,000 milreis for the vessel and 1,000 milreis as a gratuity to the master, the respective equivalents being put at $7,500 and $1,250; and it was said that after the voyage the vessel had to return to the United States, "owing to a change of government", and that the charter party was of record in the public offices at Pernambuco. The claim was for the amounts mentioned.

The only evidence then (or, so far as appears, at any time) submitted to the Department of State was a copy of the charter party, which is quoted in extenso in the Morgan report; two individuals are therein named as the charterers without designation of any official capacity.

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In an instruction to Ethan A. Brown, Chargé d'Affaires at Rio de Janeiro, of October 20, 1830, from Secretary of State Van Buren, the following was written (D.S., 14 Instructions, American States, 121–22):

The letter of which the enclosed is a copy, and the document accompanying it, were lately received at this Department. They exhibit a claim of M[r] John B. Bornadon [Bernadou], a part owner of the brig Sally Dana, for the amount of the freight of that vessel, chartered, as he states, by the Government of Pernambuco, in 1817, for a voyage to Mozambique and back, under the charter party of which a copy is annexed. It appears that, owing to the change of Government which took place about that time, the amount in question has never been paid. If the charter has really been entered into by the Provincial Government of Pernambuco, it is presumed that the claim arising under it forms the ground of a just demand upon the present authorities of Brazil, notwithstanding that the country was at that time in the allegiance of the Portuguse crown. You will, therefore, urge it upon the consideration of His Majesty's Government, and endeavor to obtain from it that justice to which the claimants appear to be fairly entitled.

In the Ribeiro report, it was said that the claim had been presented to the Brazilian Government by note of February 13, 1832, which had been at once answered (March 7, 1832) with a denial of the claim; that no evidence of the charter party had been found at Pernambuco; and that the ephemeral government which had there existed in March 1817 had no business of Brazil in Mozambique.

In the Morgan report are the following comments on the case:

Apart from the charter party exhibiting no evidence of being executed by persons in a public capacity, it does, as the writer conceives, bear upon its face strong marks of being nothing more nor less than a contract for a slave voyage.

1. The contract is for a voyage from Pernambuco to Mozambique & back. Mozambique is a favorite and notorious resort for slave ships.
2. The Captain was to receive a *gratuity* of one thousand mil reis, at that time equal to $1250, for this single voyage.
3. And the freighters "doth further agree that if said brig should be *seized* at Mozambique, or in any way molested, to pay for said vessel ten thousand mil reis." This was in 1817.
4. "All *passengers* that are put on board the said brig by said freighters, or by their order or request, are to be furnished with all kinds of provisions, liquors, &c., by said freighters, that they shall not become a charge to said vessel."
5. The brig is valued at ten thousand mil reis, and yet the sum to be paid for this single voyage & the *gratuity* to the captain, amount to seven thousand mil reis—a delay of only twenty days being allowed at Mozambique.

At the hazard of rendering himself obnoxious to the charge of presumption, the writer has felt constrained to direct attention to the provisions of this charter party. In doing this, he feels the less reluctance as the instrument is here introduced at length, & if the observations of the writer are not supported by the document itself, they can work no prejudice to the parties interested, of whom he knows nothing, good, bad, or indifferent; his conclusions in the premises are based exclusively upon the language of the charter party. A residence in Brazil has made him familiar with the mode of conducting the slave trade, and a knowledge of its atrocities will not permit him to preserve silence when a failure to speak may lead to the continued prosecution by his government of a claim based, as he believes, upon this horrible traffic.

The claims submitted to the adjudicating Commission were for two thirds of the charter, the gratuity, some other items amounting to $534.12, and interest. The reasons given for disallowing the claims

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were stated as follows (D.S., Record of the Proceedings of the Brazilian Commission 54–57, 171–72):

it does not appear from any evidence filed in this case, that, either the Charter Party, or, the contract for the purchase of the Codfish alledged in the memorials to have been entered into between the Brazilian Authorities and the agent for the memorialists, was ever executed by said authorities. And even if that charter party and contract, had been established by competent proofs, I do not consider, that according to the principles of International law as uniformly acknowledged and acted upon by the Government of the United States it can enforce or demand any claim arising out of a mere contract between one of its citizens and a foreign government.

The "Tarquin" (No. 14)

The case of the ship *Tarquin* was the subject of various instructions, the earliest of which was written by Secretary of State John Quincy Adams on December 30, 1817, to Thomas Sumter, Minister at Rio de Janeiro, in these terms (D.S., 8 Instructions, U.S. Ministers, 302–3):

The Petition to Congress from Richard Mitchell junr, Alexander C. Mitchell and Jared Gardner, Inhabitants of the Island of Nantucket and Owners of the Ship Tarquin, of which a Copy is herewith enclosed, has been referred by the house of Representatives to the Secretary of State. The papers with which it was accompanied are perfectly familiar to you, several having been written by yourself—They present a case of great hardship in relation to the interest of the Petitioners, and a claim upon the justice, to say nothing of grateful generosity, of the Government of Rio de Janeiro, which it is earnestly hoped you may be enabled to lay before them with effect, and to the satisfaction of the Petitioners. The nature and importance of the service rendered by Captain Bunker, the heavy and unavoidable injury to his Owners by the loss of his Voyage, which necessarily resulted from it, the promise of indemnity made to him by the Portuguese Commander in the hour of his distress—the superadded sanction of the personal promise of the Sovereign, and the notorious and demonstrated inefficiency of the remuneration with which Captain Bunker was obliged to come home to his Owners, with a tale of unrequited kindness to those who were ready to perish and whom he saved from destruction. If Count Palmela is at the head of the Department to which you will state this combination of claim for redress, not to mention reward, I am sure it is not in his nature to resist it's appeal at once to the Understanding and the heart. He will not turn over the Petitioners or you to another Department or send them to be entangled in Custom house calculations, to dismiss them with the smallest possible indemnity. He will feel that their losses ought to be effectually made good to them, and he will see that they shall be made good. Such is at least my personal confidence in his character. As you are perfectly Master of the subject, you will not fail to present it in the light, and in the manner best adapted to obtain for the Petitioners the indemnity to which they have so clear and so just a demand.

The attitude of the Brazilian Government toward the claim was thus stated in the despatch of Tudor of August 25, 1828 (D.S., 6 Despatches, Brazil, No. 103):

The Tarquin of New Bedford presents a claim for services rendered a Portugese public ship, this took place before the Independence of Brazil, & this government say is not obligatory upon them, the owner must therefore resort to Portugal.

The facts in the case of the *Tarquin* and the decision reached by the adjudicating Commission are set forth by the Commissioner, George

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P. Fisher, in a letter to Hannibal Hamlin, counsel for the claimants, dated February 26, 1852, as follows (D.S., Letter Book, Claims on Brazil, 183–94; see also D.S., Record of the Proceedings of the Brazilian Commission, 76–98):

I have the honor to inform you that I have concluded the examination of the evidence and your argument filed in the claim of Alex^{r} C. Mitchell in his own behalf, and in behalf of the other parties interested as owners of the ship Tarquin against the Imperial Government of Brazil.

I have also thoroughly examined the correspondence held between this Government through its diplomatic agents and the Imperial Government of Brazil which I have found necessary to a proper understanding of the origin and nature of the claim preferred. I have adopted the correspondence of our Minister at Rio de Janeiro as a part of the evidence in the case, because I considered any statement of fact contained in that correspondence as one which could be relied on, coming as it did from the duly authorized agent of this government who it is presumed would not pervert the truth in speaking of matters of fact to his own government, as well as because that correspondence furnishes upon some points in the claim the best and only evidence of which the nature of the case will admit in consequence of the great lapse of time that has occured from the origin of this claim. From the correspondence of Mr Thomas Sumter held with the Department of State immediately after the origin of this claim, as well as, from the depositions of W. Hussey and Alex^{r} Mary two of the hands employed on board of the Tarquin at or about the time alleged in the Memorial succeeded at great personal risk to the Master and Crew, as also at the risk of losing the ship in the efforts to save the Transport vessel Don João Magnanimo belonging to John VI King of Portugal Brazil and the Algarves then holding his Court at Rio de Janeiro, and bringing said Transport in safety into the harbour of Santos. From the same evidence it also appears that in consideration of the service thus performed, King John VI issued an order that the Tarquin which lost the chances of a whaling voyage owing to this interruption should have her cargo fully completed with oil from the Royal Magazines in Rio de Janeiro. This, considering the number of Government Troops, and the large amount of specie said to have been on board the Transport was it is true but a moderate compensation, tho' it appears to have been one which was altogether satisfactory and acceptable to the Master of the Tarquin. It also appears from this same evidence that the order thus issued by the King was shamefully evaded by the officers of the crown, who instead of filling the Tarquin with oil as directed only put on board her 229 Barrels while the vessel was actually capable of holding 1333 Barrels and eight gallons. It also is proved by the same and other evidence in the case, that the Tarquin was detained at Rio de Janeiro in the hope that the decree of the King would be complied with in good faith for some ten months or more, in which time had she not been diverted from her voyage she would with ordinary luck have filled up the complement of her cargo, and returned home to Nantucket, the port from whence she sailed. From other evidence in the case it is shown that the American Oil with which the Tarquin returned to Nantucket was worth at the time Forty five Cents per gallon, and that at this price the oil she would have received had the order of the King been complied with in good faith would have been worth the sum of Fifteen thousand six hundred and fifty two $^{8}/_{100}$ Dollars, which with Interest from the 6th of June 1817, the time of her arrival home at Nantucket until the 1st of March next would make the aggregate sum of Forty eight thousand two hundred and seventy and seventy three $^{2}/_{100}$ Dollars.

. . . . . .

The Citizenship of the Captain and owners of the Tarquin is proved by the best evidence of which the nature of the case will admit. The citizenship of the persons composing the crew it was not necessary to have established, because they are not, and never were claimants against the Government of Brazil; their claim, was and is against the part owners of the Tarquin, the share of each individual of the crew of a whaler being in "the nature of wages unliquidated at the time but "capable of being reduced to a certainty upon a conversion of the oil into money"

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in other words, had the Tarquin pursued her voyage regularly, and returned into Nantucket with a full cargo of oil, each individual of her crew would have been entitled to receive wages to the extent of his proportion in the produce of the voyage. Their remedy would have been assumpsit against the owners had the latter refused to comply with their engagements; but the owners had the right to claim the whole amount of oil necessary to complete the cargo against the Brazilian Government whether the crew of the Tarquin were Americans or not.

The Award and distribution of it are based upon these principles.

The Material facts alleged in the Memorial as the basis of the claim preferred, being fully established, it becomes necessary to enquire whether the present Government of Brazil is liable to the claimants, or whether her separation from Portugal has released her from that liability in whole or in part.

It is true, that until the Portuguese Monarch was driven by the convulsions which shook the continent of Europe in the beginning of the present century, to transfer his court from Lisbon to Rio de Janeiro in 1808 Brazil had been but a mere colony of Portugal; but from the date of the establishment of that court at Rio de Janeiro Brazil may be said to have begun to emerge from her state of colonial vassalage, and to have resin gradually to dignity and preeminence until on the 17th day of December 1817 she was finally elevated by the Prince Regent to become a Kingdom, and was immediately united with Portugal and the Algarves under the style and title of the United Kingdom of Portugal, Brazil and the Algarves. This event is commemorated by Mr Sumter the United States Minister then residing at Rio de Janeiro in a dispatch addressed to the Department of State bearing date of the 29th December 1815 in the following language "under the cover marked A you will find a Law which was published "at this Court on the 17th inst, which was the Queen's Birthday erecting Brazil "into a Kingdom uniting it together with the Kingdoms of Portugal and the "Algarves in one political body, and assuming for the Prince, a title analagous "to this change and union." In the paper referred to it is decreed as follows, "that from and after the publication of the present law the *State* of Brazil shall "be raized to the dignity, pre-eminence, title, and denomination of the Kingdom "of Brazil; second, that my Kingdoms of Portugal Algarves and Brazil shall "hence-forth be one single Kingdom, under the title of the United Kingdom of "Portugal Brazil and the Algarves." Thus it was, that the Sovereignty of Brazil was formally declared by the Prince Regent himself whilst that sovereignty had been before recognized by the Treaty of Vienna, and Brazil became one of the co-ordinate states of the United Kingdom of Portugal Brazil and the Algarves, each of which co-ordinate states was invested with the right of self government, Brazil having its own legislative assembly, and being actually the residence of the head of the United Kingdom. and of his Court. Such was the status of Brazil, when the claim in question originated, to wit in the summer of 1816. The vessel saved by the Tarquin and the troops on Board that vessel were at the time engaged in the service of Brazil destined to Saint Catharines—the decree from the Prince Regent made in accordance with his promise to Capt. Bunker to fill up the complement of his cargo of oil in satisfaction of the claim of salvage, was issued in Rio de Janeiro and was to have been executed there by taking so much oil from the Royal Magazines in that City: so that the service rendered by the Tarquin was rendered to Brazil alone and that service was very properly ordered by the Prince Regent to be requite at the expense of Brazil alone. No contribution whatever was to have been made by Portugal. The question then presents itself whether on the separation of the two countries which subsequently took place, this claim still remaining unliquidated became extinguished altogether by that separation or was transformed in whole or in part to Portugal from Brazil whose Royal Magazine was to have furnished the Oil decree to be delivered to Capt. Bunker, and which (that oil never having been so delivered) was the gainer by so much oil or its equivalent (all public property upon the separation as did in Portugal or Brazil just as that separation happened to find it) or whether Brazil alone should be held to the entire liability of the claim.

This claim was in the nature of a public debt, founded upon the Kings decree and by the rule of international law public debts are not extinguished upon the

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division of a state into distinct States whether that division be by war or mutual consent; but they must be discharged either jointly or severally according to the principles of justice and equity, and as to Brazil accured the entire benefit of the service rendered by the Tarquin as in her Royal Magazines remained for her benefit the oil with which that service should have been requited and paid in obediance to the order of the King, so also, upon every ground of equity and right should the entire responsibility for this claim have passed to her upon her separation from Portugal.

Entertaining therefore the opinion that the present Government of Brazil is clearly responsible for the non-performance of the decree of the King by the officers charged to carry it into execution, I have awarded to the said Alexander C. Mitchell in his own behalf, and as attorney in fact, for the other part owners of the Tarquin the sum of sixty nine thousand eight hundred and sixty eight and $^{2}/_{100}$ Dollars, it being for the item claimed in the account accompanying the Memorial (as corrected, to conform to the evidence) for the quantity of oil which it would have required to complete the cargo of the Ship, viz: 1333 Barrels and 8 gallons, or 34784 gallons at 45c per gallon equal to the sum of $15,652.80 and also for a part of the item charged for detention[1] to wit for five months commencing the 24th day of September 1816 the date of the order of the P. Regent commanding the cargo to be completed out of the Royal Magazine and ending the 20th day of Feb 1817 when the U.S. Minister inform capt Bunker that he had better leave Rio and abandon all hopes of having that order fulfilled with the interest on both said items as allowed at 6 per cent per annum from the 6th day of June 1817 the day of the arrival of the Tarquin at Nantucket to the 1st day of March next, the day for the closing of this commission. This award is decreed to be distributed among the owners and Crew of the Ship Tarquin in the following proportions.

. . . . . .

The rest of the item charged as demurrage for the Tarquin during the time she remained at Rio de Janeiro the master Bunker negotiating with the King for the compensation in lieu of salvage and for damages consequent upon the detention which it is alleged prevented her from making another voyage in the year 1817 after her return to Nantucket cannot be allowed. 1st Because until the decree was issued by the King to complete the cargo there was no violation of law by the authorities on which to found the claims and the whole matter was merely a subject of negotiation which necessarily required time for perfection. 2d The evidence shows that the Tarquin left Nantucket on the *20th August 1815* upon the voyage in which she was engaged at the time in which she fell in with the rescued vessel. She returned however about the 1st of June 1817 having been out about 21 months. If she commenced *this* voyage about the last of August 1815 no good reason appears (as she had nearly three months to spare) why she could not have commenced a new voyage about the same time in the year 1817.

The item charged in the account for Bone,[2] cannot be allowed, because the decree of the King did not include any thing but the completion of the cargo of Oil.

The "Amazon" (Nos. 36 and 37)

The New York–South American Steamboat Association on May 25, 1825, addressed a letter to José Silvestre Rebello, Brazilian Chargé d'Affaires at Washington, informing him that the company had been formed for the purpose of navigating the Amazon and its tributaries by means of steamboats and inquiring (1) whether it was probable that the Government of Brazil would grant the company an exclusive right of navigation of the Amazon by steamboats for a

[1] In the filed claim the item for the oil was $15,663.15 and that for demurrage, etc., was $18,200.00; for the latter the Commissioner allowed $7,000.00.

[2] In the filed claim the item for whalebone was $3,410.00.

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limited term of years and (2) whether the Chargé d'Affaires would furnish such papers to the vessel which was to be sent as would secure her, in any event, permission to navigate the river and its tributaries within the Empire of Brazil for a period of at least twelve months. In his answer, dated June 21, 1825, Rebello quoted from his instructions, which directed him to encourage the bringing of steam vessels to Brazil and offered to such enterprise the protection of the Government in the most liberal and profitable manner; and he added that when the vessel might be ready to depart, he would furnish official letters addressed to the President of the Province of Pará in which he would copy the relevant portion of his instructions and convey his recommendations.

There was further correspondence during the same year, and an agent of the company who was sent to Rio de Janeiro was given official introductions by Rebello to two of the Secretaries at the Brazilian capital.

A vessel was constructed by the company, the steam schooner *Amazon*. She sailed from New York on March 29, 1826, with a cargo of merchandise for trade. The agent in charge had a letter of introduction to the President of the Province of Pará from the Chargé d'Affaires in which the latter explained his efforts to persuade individuals to employ their capital in the navigation of steam vessels in the rivers of Brazil and stated that he had promised to the company, in writing, security of persons and property and proper attention on the part of the Government thereto as if they were Brazilians, with the condition that the vessel should always use the Brazilian flag, to which, it was said, the company had agreed.

The *Amazon* arrived at Pará about May 16, 1826, and after some delay was refused permission to navigate the Amazon.

The *Amazon* left Pará in March 1827 for Cartagena to dispose of some of her cargo, after which she returned to New York, arriving there on June 20. She was libeled and sold in the District Court for the Southern District of New York in the following December.

While the company had endeavored at Rio de Janeiro to obtain a grant of an exclusive privilege for the navigation of the Amazon, no such privilege was obtained, and no claim therefor was made.

The case was first brought to the attention of the Department of State by a memorial of June 14, 1827, signed by the president of the company, wherein it was said that the loss sustained would amount to at least $150,000 and that if the Brazilian Government had, during the winter of 1825–26, given notice to the agent of the company at Rio de Janeiro or to the Chargé d'Affaires at Washington that permission to navigate the Amazon would not be accorded, the loss might have been avoided.

In the Morgan report, the memorial of June 14, 1827, is quoted at length; the original thereof (D.S., Brazilian Claims, folder *Amazon*) bears the following endorsement in the handwriting of President John Quincy Adams:

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Mr Tudor should be instructed to sustain, so far as may be proper, the Representations of this Company to the Government of Brazil. But as matter of contract, between the Company and the Brazilian Government, that of the United States can interpose only by its good offices.

J. Q. A.

5. July 1827.

Instructions in the sense of the quoted endorsement of President John Quincy Adams were sent to Tudor on October 23, 1827 (D.S., 12 Instructions, U.S. Ministers, 1–13); and the case was first presented by him to the Government of Brazil by note of February 5, 1829, which met with a rather indefinite reply (D.S., 6 Despatches, Brazil, No. 125, April 18, 1825, enclosures 6 and 15). Later in the same year a memorial from the company, addressed directly to the Emperor of Brazil, was transmitted to the Foreign Office; therein the amount of the claim was put at $168,743.85, including interest to that time; the three items of the total were: loss on the sale of the vessel, $67,650.91; loss on the cargo, $45,008.09; and "reasonable profit", $56,084.85 (D.S., Brazilian Claims, folder *Amazon*).

The case continued to be treated as "matter of contract" until an instruction from Secretary of State Calhoun to Wise of May 25, 1844 (D.S., 15 Instructions, Brazil, 100–5), which expressed a decided opinion that the Brazilian Government ought to make amends for the losses actually sustained by the company in consequence of prohibiting the navigation of the river Amazon by the steam schooner after the invitation given in the instructions to Rebello. A note from Wise of November 17, 1845, accordingly presented the claim definitely (D.S., 14 Despatches, Brazil, No. 35, November 24, 1845, enclosure G).

The comments of the Ribeiro report were chiefly directed to the amounts of the items of the claim, which were thought to be greatly exaggerated.

The claim for the vessel (No. 36), as presented to the adjudicating Commission, was in the amount of $107,812.84. Beyond this, however, interest from 1829 was asked, which would have brought the total to more than $250,000. Among the items of the claim were loss on the sale of the vessel, say $54,000, and profit of say $40,000. The Commissioner allowed for loss on the schooner $12,181.41, and this with interest from 1827 made a total allowance of $30,229.80 (D.S., Record of the Proceedings of the Brazilian Commission, 205–13). There was also a claim for the cargo (No. 37) amounting to $29,446.65 without interest, which, with interest, would have come to more than as much again. This claim was disallowed "because the invitation and promise given by the Chargé d'Affaires of the Imperial Government of Brazil near the Government of the United States to the New York South American Steamboat Association to navigate the River Amazon, did not amount to a grant by the said Imperial Government to the Stockholders of said Association or to any other persons the right to traffic in Merchandize along the coasts of said river" (*ibid.*, 214–17).

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JOSEPH RAY (No. 28)

Some sixty-seven pages of the Morgan report are devoted to the claim of Joseph Ray, who was consul at Pernambuco in 1816–17 and who was there engaged in business in the mercantile house of Ray & Bryan.

Because of alleged participation in revolutionary activities, an order for the expulsion of Ray from Brazil was made on April 30, 1825, and he was compelled to leave the country in the following September. Ray, by a letter of May 8, 1826, to Secretary of State Clay, requested the interposition of this Government for the purpose of obtaining redress for his banishment; but no instructions were given to that end and the order of expulsion was not a direct ground for the subsequent claim. In August 1826, attachment by a creditor resulted in the appointment of commissioners to liquidate the affairs of the firm of Ray & Bryan. Whether those proceedings were judicially resisted or whether they were consented to by Bryan, the partner of Ray, is not clearly shown. There was maladministration in the liquidation, and the result was a heavy loss. It was on the proceedings taken in 1826 and their consequences that the claim of Ray was based.

On November 18, 1830, the relevant papers in the case were transmitted to the Chargé d'Affaires at Rio de Janeiro, and he was directed to employ his good offices for obtaining from the Government of Brazil the indemnity to which Ray might be found entitled (D.S., 14 Instructions, American States, 123–24). Following an interview with the Minister of Foreign Affairs, Brown reported that the subject was too delicate to be moved at that time and requested the return of the papers which he had left at the Brazilian Foreign Office. In 1836 Ray was again appointed consul at Pernambuco (where he served until 1842), and on October 7 of that year instructions similar to those of 1830 were sent to William Hunter, Minister at Rio de Janeiro; but he expressed an unfavorable opinion of the claim and seems to have taken no official steps regarding it.

On June 4, 1843, Ray withdrew from the Legation all the papers in the case and then obtained leave to sue the National Treasury of Brazil. In that suit the plaintiff claimed [1] 680,000 milreis: 154,000 milreis as a balance due from the liquidators of the affairs of Ray & Bryan and 200,000 milreis for loss sustained by the suspension of his business; with these two items was taken into account the difference in exchange rates between 1826 and 1843, making up the total of the demand. The suit was defeated by a plea in bar of the statute of limitations, grounded on a law of 1841, which provided that all claims against the Government of Brazil which originated in transactions from 1826 and were not presented prior to January 1, 1843, should be null and void.

Following another application by Ray to the Department of State, his case was discussed at some length by Secretary of State Calhoun in an instruction of July 18, 1844 (D.S., 15 Instructions, Brazil,

[1] Approximate figures are given here.

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106–13). That instruction, however, was based upon a mistaken belief that the suit against the National Treasury of Brazil had then terminated and upon another misapprehension, perhaps more important, "that the assignees in whose charge the property of Ray and Bryan was placed, themselves acknowledge a balance due that house of one hundred and fifty three thousand milreis after the settlement of the demands against the house". The statement of the assignees thus referred to was no more than an account of assets and liabilities made up from the books of Ray & Bryan, showing an excess of assets in the sum mentioned. The following directions were given to the Minister at Rio de Janeiro:

> You will represent that the government of the United States is convinced that Mr Ray has been wronged by the proceedings under the sequestration. It would have been desirable that the judicial tribunals of Brazil should have afforded him relief, but as his application through that channel has failed, this government deems itself bound to interpose in his behalf. It is opinion that if it should not be competent for the Executive branch of the Brazilian government to grant relif, the act of limitation, barring the legal prosecution of Mr Ray's claims, should be so modified as to permit him to apply to the Courts of Justice for a decision of his case.

Pursuant to that instruction, the claim was duly presented to the Government of Brazil by note of November 4, 1844 (D.S., 13 Despatches, Brazil, No. 8, November 13, 1844, enclosure), and in a despatch of the following December 14 (*ibid.*, No. 9), the American Minister, Henry A. Wise, wrote that the Minister of Foreign Affairs had "as much as admitted" that the claim was just; but there is no such admission in the diplomatic correspondence; and in a note of November 14, 1846, the claim was definitively rejected by the Brazilian Government.

In the statement made to the Minister at Rio de Janeiro on October 30, 1847, Ray claimed the great total of 1,982,765 milreis, of which 912,000 milreis was for difference in exchange. The other items were: amount due from the liquidators, 154,000 milreis; value of goods in stock, etc., 200,000 milreis; and estimate of profit for twenty-two years, 716,000 milreis.

Ray objected to the terms of the convention, and it was said by Tod that so far as he was aware Ray was the only claimant dissatisfied therewith (see D.S., 17 Despatches, Brazil, No. 40, August 23, 1849).

In the year 1849, Ray died, and the items of the claim which was presented to the adjudicating Commission by his administratrix and which was wholly disallowed were three: due from the liquidators of Ray & Bryan, Rs. 153,971$628; ten years' profits, Rs. 325,782$630; and goods in stock, etc., Rs. 162,891$315; a total of Rs. 642,645$573.

Isaac Austin Hayes (No. 23)

The Morgan report quotes the substance of a protest made by Hayes on June 20, 1836, and contains the following paragraph of comment on the claim:

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Mr. Hayes, now deceased, was United States Consul at Porto Alegre, in the province of Rio Grande [do Sul]. During the summer of 1836, when that province was in a state of revolt, Mr. Hayes was arrested, and underwent a few hours imprisonment, under suspicion that he favored or succored the rebels. He had been engaged in commercial pursuits, under the firm of "Hayes & Engerer", the latter not being a citizen of the United States. It seems that after his imprisonment, Mr. Hayes quit the province, returning to the United States, and he preferred a claim for damages resulting from his imprisonment & absence, and likewise for the losses occasioned by the imprisonment & expulsion from Rio Grande, of his partner, Mr. Engerer.

Several instructions regarding the claim were written from 1836 to 1840. The following is excerpted from that of March 4, 1840, by Secretary of State Forsyth (D.S., 15 Instructions, Brazil, 67–68):

You will be careful to discriminate between that part of the case of Mr Hayes which consists of the indignity to this government through the violence committed against him as its officer, and the pecuniary damage which he alleged to have sustained as an individual and a merchant. According to the proof which has been submitted to the department, this allegation was based principally if not wholly upon the mere fact of his having left Porto Alegre, which appears to have been altogether voluntary on his part. He was informed that this government could not demand reparation according to the account which he presented without further proof and especially without being satisfied that he was *illegally compelled* to depart from that place. This proof has never been offered. While, therefore, we must forbear urging the claim for pecuniary recompense in this case until its correctness is made more apparent, we cannot with propriety neglect any proper means or opportunity to obtain satisfaction for the imprisonment of Mr Hayes. You will consequently direct your course by these views.

The claim of Hayes, as filed with the Commission, was in three items, namely, damage for illegal arrest and imprisonment, $50,000; one fifth of the actual losses sustained by the firm of Hayes, Engerer & Company, $40,000; and "actual damages", one fifth of Rs. 62,739$703.

On June 28, 1852, the Commissioner held the claim to be not valid because, "the claim being one arising out of the alleged false imprisonment of the said Isaac Austin Hayes by the Brazilian Authorities, all right to claim damages for said false imprisonment died with the person of said Hayes, according to the well established maxim of Law 'Actio personalis moritur cum persona' ". On the following day the case was reconsidered on a written argument of counsel, and the Commissioner then "rejected all the items in the exhibit as being inflated and speculative" and allowed to the claimant $1,000. (D.S., Record of the Proceedings of the Brazilian Commission, 141–43, 223–24).

A claim filed by the two surviving partners of the firm of Hayes, Engerer & Company (No. 2) for more than $200,000 was disallowed because it had not been presented to the Government of Brazil prior to the date of the convention (*ibid.*, 3–4).

Restitution of Fines

There were six of these small claims, two of which, the *Mary* and the *Ohio*, were not presented to the adjudicating Commission. The other four were allowed for a total of $4,721.55, including interest from

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1835 and 1837; these were the *Hope* (No. 11), the *Canada* (No. 15), the *Louisiana* (No. 20), and the *Florence* (No. 21); the claim in the case of the *Canada*, as submitted to the Commission (but not as presented to the Government of Brazil), included other items amounting, with interest, to $23,581.28, which were not allowed. In the case of the *Hope*, the Commissioner wrote his views at length (D.S., Letter Book, Claims on Brazil, 88–100; quoted in part in Moore, International Arbitrations, V, 4614–15).

The "Atlas"

This was a small claim for refund of excess duties; it was not submitted to the Commission.

Recovery of Duties Paid on Reexportation

There were two small cases of this nature; that of the *Erie* (No. 31) was allowed for $1,138.83, including interest from 1835; that of the *Cincinnatus* (No. 33) was filed with the Commission (in no stated amount) but with no evidence, and was disallowed; it was said to have been paid in 1831.

The "Orient" (No. 38)

This small claim was for interest on duties twice paid and refunded some six years later; it was allowed for $506.65, including interest from 1836.

Wright and Houghton (No. 17)

While this claim was finally deemed to be one of those presented, it is not mentioned in the Morgan report and is the only one of such claims not referred to therein.

The claim, as presented by Hunter to the Brazilian Government by notice of September 11, 1838, on behalf of Maxwell, Wright & Company, of Rio de Janeiro, was for the value of 500 (seemingly intended to be 600) barrels of flour seized by the authorities of Porto Alegre (D.S., 11 Despatches, Brazil, No. 82, September 12, 1838, enclosure); in the despatch cited Hunter wrote that he "felt a disinclination to interfere"; while three members of the firm named were American citizens, at least three others, including the head of the house, were not; and the proceedings had been taken under a local sanitary regulation; but Hunter was induced to act because the Minister of France was making representations in a similar case.

The claim was rejected (January 15, 1839) by the Government of Brazil on the ground that an epidemic had lately occurred from decayed flour, causing many deaths, and that the flour in question had been found, after examination by a suitable commission, unfit to use and had been thrown into the sea. On March 20, 1839, Hunter wrote to the Brazilian Foreign Office requesting on behalf of Maxwell, Wright & Company the return of the papers previously transmitted, in order to enable that house "to present a proper statement of the

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affair to their foreign correspondent" (*ibid.*, No. 89, April 16, 1839, enclosures); and the papers were duly returned (D.S., Legation Archives, Brazil, Notes from the Foreign Office, 1828–43, April 3, 1839).

Under date of January 23, 1852, the Commissioner wrote as follows to counsel for the claimants (D.S., Letter Book, Claims on Brazil, 155–56, letter to Henry May):

> In regard to the claim of Mr John S Wright, I have to state that upon a thorough examination of the records of the correspondence between the United States Chargé d'Affaires at Rio de Janeiro, and the Minister for Foreign Affairs of the Imperial Government of Brazil I find that the claim now preferred by Mr Wright in his own behalf was at one time presented by Mr Hunter to the Government of Brazil, and a demand made for satisfaction in behalf of the House of Maxwell Wright & Co that the merits of the claim were examined by Mr Hunter and the secretary of state for Foreign Affairs of the Imperial Government and the result of that examination was an entire withdrawal of the claim by our Minister. This withdrawal was formally made on the 20 March 1839 nearly a year after the date of the letter to which you refer as giving notice to the Department of State of the claim—ever since which period this claim has rested in silence, so far as our Legation at Rio was concerned.
>
> Neither Mr Profit, nor Mr Wise seem even to have been disposed to renew it, and Mr Tod finding the claim to have been formally withdrawn, as above stated never took occasion in his correspondence upon the subject of claims to represent it to the Government of Brazil either in behalf of the House of Maxwell Wright & Co or of Mr J. S. Wright the present claimant.
>
> As this claim therefore, was not one of those which went to make up the basis of the Treaty of 1849, or which could in any way be considered as having been presented by our Government to that of Brazil (the withdrawal leaving it as though it had never been presented at all) I do not consider, that I have any power to pass judgment upon it.

Among the claims papers is an affidavit (dated February 16, 1852) of William H. De C. Wright, who deposed that he was the senior American partner of the firm of Maxwell, Wright & Company; that the flour in question had been sold by that firm in December 1837 to John S. Wright and Henry A. Houghton, who bought the same as joint adventurers; that John S. Wright was at the time a clerk of Maxwell, Wright & Company, that Houghton was a supercargo, and that both of them were citizens of the United States; that deponent had seen lately for the first time a copy of the letter of Hunter dated March 20, 1839 (cited, with a phrase quoted therefrom, above); that deponent had never heard that the papers of the claim had been withdrawn or requested to be withdrawn by anyone; and that the papers of the said claim were never returned to the firm or to any member thereof.

On June 26, 1852, the claim of Wright and Houghton was allowed in the sum of $14,528.37, which was $149.90 less than the amount thereof as filed (D.S., Record of the Proceedings of the Brazilian Commission, 110–14).

The Claims Commission

Tod had recommended that the tribunal for adjudication of the claims should sit at Rio de Janeiro; he wrote as follows in his despatch of August 23, 1849 (D.S., 17 Despatches, Brazil, No. 40):

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With regard to the distribution of the fund, permit me to recommend that the tribunal appointed for that purpose be directed to sit at this place. Indeed, it would be almost impossible to do complete and ample justice to the several claimants, with any degree of despatch, at any other place. The claims, as a mass, originated here, and the testimony to sustain or impeach them, is here chiefly to be procured. Should a board sit at Washington, great embarrassments would inevitably arise; it would be impossible for the claimants to anticipate and prepare themselves with all the proofs they might, in an unforseen contingency, require; and the intervening distance would be too great to enable them to supply the deficiency. Those interested in the fund will have, when the board assembles, for the first time an opportunity to impeach the claims of each other; and, as I have before said, if this investigation takes place at Washington, it will be impossible for the parties to rebut objections which may be unexpectedly urged against their right to recover.

The views of Tod were shared by the Rio de Janeiro agents of the claimants, who wrote in the same sense (*ibid.*, No. 42, September 3, 1849, enclosure A, of August 28); and those recommendations were laid before Congress with the presidential message of January 23, 1850, which communicated the convention (see House Executive Document No. 19, 31st Congress, 1st session, serial 576).

However, by the statute which was enacted on March 29, 1850, "to carry into Effect the Convention between the United States and the Emperor of Brazil" of January 27, 1849 (9 Statutes at Large, 422–23), provision was made for the apppointment of a commissioner to sit at Washington to decide the claims presented; the statute was extended by a proviso in the act of March 3, 1851 (*ibid.*, 606), and by a joint resolution of February 27, 1852 (10 *ibid.*, 146).

An account of the proceedings had under the statutes cited is in Moore, International Arbitrations, V, 4609–26.

The amount realized by the Treasury from the 530,000 milreis payable and duly paid by the Government of Brazil pursuant to the convention, was $322,535.98 (Thomas Corwin, Secretary of the Treasury, to George P. Fisher, Commissioner, February 26, 1852; D.S., Brazilian Claims, Miscellaneous, envelope 1, folder 2).

Thirty-eight claims were submitted to the Commission; thirteen thereof were dismissed or rejected; the sums allowed totaled, including such interest as was adjudged due, $418,073.65; the awards were necessarily reduced proportionately so as to correspond to the amount available for payment, $322,535.98; each award was for slightly more than 77 percent of the amount found to be valid.

A very considerable part of the totality of the allowances was for interest. The prize claims dated back more than twenty years when the Commission sat; and one of the largest of the allowances, that in the case of the *Tarquin*, included interest for thirty-five years at 6 percent.

Records and papers of the Commission are in the archives of the Department of State (Record of the Proceedings of the Brazilian Commission; Letter Book, Claims on Brazil; and Brazilian Claims, folders of miscellaneous unbound papers and of papers relating to the respective cases).

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Treaty Series No. 149
10 Statutes at Large, 873–89
18 *ibid.*, pt. 2, Public Treaties, 378–86

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GUATEMALA : MARCH 3, 1849

Treaty of Peace, Amity, Commerce, and Navigation, signed at Guatemala March 3, 1849. Original in English and Spanish.
Submitted to the Senate March 25, 1850. (Message of March 19, 1850.) Resolution of advice and consent September 24, 1850. Resolution of advice and consent to the exchange of ratifications at any time prior to April 1, 1851, September 27, 1850. Ratified by the United States November 14, 1850. Ratified by Guatemala March 20, 1849. Ratifications exchanged at Guatemala May 13, 1852. Question of the exchange of ratifications submitted to the Senate May 5, 1852. Resolution of advice and consent to the exchange of ratifications at any time prior to November 1, 1852, June 7, 1852. Proclaimed July 28, 1852.

General Convention of peace, amity, commerce and navigation between the United States of America and the Republic of Guatemala.

The United States of America and the Republic of Guatemala desiring to make firm and permanent the peace and friendship which happily prevails between both nations, have resolved to fix in a manner clear, distinct and positive the rules which shall in future be religiously observed between the one and the other, by means of a treaty, or general convention of peace, friendship commerce and navigation.

For this most desirable object the President of the United States of America has conferred full powers on Elijah Hise Chargé d'Af-

Convencion General de paz, amistad, comercio y navegacion, entre los Estados Unidos de America y la Republica de Guatemala.

Los Estados Unidos de América y la Republica de Guatemala deseando hacer firme y permanente la paz y amistad que felizmente existe entre ambas potencias, han resuelto fijar de una manera clara, distinta y positiva las reglas que deben observar religiosamente en lo venidero, por medio de un tratado, ó convencion general de paz, amistad, comercio y navegacion.

Con este muy deseable objeto, el Presidente de los Estados Unidos de América ha conferido plenos poderes á Elias Hise En-

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faires of the United States near the Government of the Republic of Guatemala, and the Executive power of the Government of the said Republic on the Sr. Lic^{do} D^{n} José Mariano Rodriguez Secretary of State and of the Department of foreign Relations, who after having exchanged their said full powers in due and proper form have agreed to the following articles.

ARTICLE 1st

There shall be a perfect, firm and inviolable peace and sincere friendship between the United States of America and the Republic of Guatemala in all the extent of their possessions and territories, and between their people and citizens respectively without distinction of persons or places.

ART: 2.

The United States of America and the Republic of Guatemala, desiring to live in peace and harmony with all the other nations of the earth by means of a policy frank and equally friendly with all, engage mutually not to grant any particular favor to other nations in respect of commerce and navigation which shall not immediately become common to the other party who shall enjoy the same freely if the concession was freely made, or on allowing the same compensation if the concession was conditional.

cargado de Negocios de los Estados Unidos cerca del Gobierno de la Republica de Guatemala, y el Poder Ejecutivo de dicha Republica al Sr. L^{do} D. José Mariano Rodriguez, Secretario de Estado y del Despacho de Relaciones esteriores, quienes despues de haberse cangeado sus espresados plenos poderes en debida y buena forma, han convenido en los artículos siguientes.

ARTÍCULO 1º

Habrá una paz perfecta, firme é inviolable y amistad sincera entre los Estados Unidos de América y la Republica de Guatemala, en toda la estension de sus posesiones y territorios, y entre sus pueblos y ciudadanos respectivamente sin distincion de personas ni lugares.

ART^{o} 2º

Los Estados Unidos de América y la Republica de Guatemala deseando vivir en paz y armonía con las demas naciones de la tierra por medio de una politica franca é igualmente amistosa con todas, se obligan mutuamente á no conceder favores particulares á otras naciones con respecto á comercio y navegacion, que no se hagan inmediatamente comunes á una ú otra, quien gozará de los mismos libremente, si la concesion fuese hecha libremente, ó prestando la misma compensacion sí la concesion fuere condicional.

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ARTICLE 3.

The two high contracting parties being likewise desirous of placing the commerce and navigation of their respective countries on the liberal basis of perfect equality and reciprocity, mutually agree that the citizens of each may frequent all the coasts and countries of the other, and reside and trade there in all kinds of produce, manufactures and merchandize, and they shall enjoy all the rights privileges and exemptions in navigation and commerce which native citizens do or shall enjoy, submitting themselves to the laws, decrees and usages there established to which native citizens are subjected. But it is understood that this article does not include the coasting trade of either country, the regulation of which is reserved to the parties respectively according to their own separate laws.

ARTÍCULO 3º

Las dos altas partes contratantes deseando tambien establecer el comercio y navegacion de sus respestivos paises sobre las liberales bases de perfecta igualdad y reciprosidad, convienen mutuamente, que los ciudadanos de cada una podran frecuentar todas las costas y paises de la otra, y residir, y traficar en ellos con toda clase de producciones, manufacturas y mercaderias, y gozarán de todos los derechos privilegios y exenciones, con respecto á navegacion y comercio que gozan ó gozaren los ciudadanos nativos, sometiendose á las leyes, decretos y usos establecidos á que están sugetos dichos ciudadanos nativos. Pero debe entenderse que este artículo no comprende el comercio de costa de cada uno de los dos paises, cuya regulacion es reservada á las partes respectivamente segun sus propias y peculiares leyes.

ART: 4.

They likewise agree, that whatever kind of produce, manufacture or merchandize of any foreign country can be from time to time lawfully imported into the United States in their own vessels, may be also imported in vessels of the Republic of Guatemala, and that no higher or other duties upon the tonnage of the vessel or her cargo, shall be levied and collected, whether the importation be made in vessels of the one country or of

ARTº 4º

Convienen igualmente que cualesquiera clase de producciones, manufacturas y mercaderias estrangeras que puedan ser en cualquier tiempo legalmente introducidas en los Estados Unidos en sus propios buques puedan tambien ser introducidas en los buques de la Repuplica de Guatemala; y que no se impondrán ó cobrarán otros ó mayores derechos de tonelada ó por el cargamento ya sea que la importacion

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the other. And in like manner, that whatever kind of produce, manufacture or merchandize of any foreign country can be from time lawfully imported into the Republic of Guatemala in its own vessels, may be also imported in vessels of the United States; and that no higher or other duties, upon the tonnage of the vessel or her cargo shall be levied and collected, whether the importation be made in vessels of the one country or of the other. And they further agree, that whatever may be lawfully exported or re-exported from the one country in its own vessels to any foreign country may be in like manner exported or reexported in vessels of the other country. And the same bounties, duties and drawbacks shall be allowed and collected whether such exportation or reexportation be made in vessels of the United States or of the Republic of Guatemala.

se haga en buques de la una ó de la otra. De la misma manera que cualesquiera clase de producciones, manufacturas y mercaderias estrangeras que puedan ser en cualquier tiempo legalmente introducidas en la Republica de Guatemala en sus propios buques, puedan tambien ser introducidas en los buques de los Estados Unidos, y que no se impondrán ó cobrarán otros ó mayores derechos de tonelada ó por el cargamento ya sea que la importacion se haga en buques de la una ó de la otra. Convienen ademas que todo lo que pueda ser legalmente esportado ó re-esportado de uno de los dos paises en sus buques propios para un pais estrangero, pueda de la misma manera ser esportado ó re-esportado en los buques del otro. Y los mismos derechos, premios y descuentos se concederán y cobrarán ya sea que tal esportacion ó re-esportacion se haga en los buques de los Estados Unidos ó de la República de Guatemala.

ART: 5.

No higher or other duties shall be imposed on the importation into the United States of any articles, the produce or manufactures of the Republic of Guatemala, and no higher or other duties shall be imposed on the importation into the Republic of Guatemala of any articles, the produce or manufactures of the United States, than are or shall

ARTº 5º

No se impondrán otros ó mayores derechos sobre la importacion de cualesquiera artículo, produccion ó manufactura de la Republica de Guatemala en los Estados Unidos, y no se impondrán otros ó mayores derechos sobre la importacion de cualquier artículo, produccion ó manufactura de los Estados Unidos, en la República de Guatemala, que los

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be payable in like articles being the produce or manufactures of any other foreign country; nor shall any higher or other duties or charges be imposed in either of the two countries on the exportation of any articles to the United States or to the Republic of Guatemala respectively, than such as are payable on the exportation of the like articles to any other foreign country; nor shall any prohibition be imposed on the exportation or importation of any articles, the produce or manufactures of the United States or of the Republic of Guatemala, to or from the territories of the United States, or to or from the territories of the Republic of Guatemala which shall not equally extend to all other nations.

que se pagan ó pagaren en adelante por iguales artículos produccion ó manufactura de cualquier pais estrangero; ni se impondrán otros ó mayores derechos ó cargas en cualquiera de los dos paises sobre la esportacion de cualquier artículo para los Estados Unidos ó para la República de Guatemala respectivamente, que los que se pagan ó pagaren en adelante por la esportacion de iguales artículos para cualquiera otro pais estrangero; ni se establecerá prohibicion sobre la importacion ó esportacion de cualquier artículo, produccion ó manufactura de los territorios de los Estados Unidos para los de la República de Guatemala, ó de los territorios de la Republica de Guatemala, para los de los Estados Unidos, que no sea igualmente estensiva á las otras naciones.

ART: 6.

It is likewise agreed that it shall be wholly free for all merchants, commanders of ships and other citizens of both countries, to manage themselves their own business, in all the ports and places subject to the jurisdiction of each other, as well with respect to the consignment and sale of their goods and merchandize by wholesale or retail, as with respect to the loading unloading and sending off their ships; they being in all these cases to be treated as citizens of the country in which

ARTº 6º

Se conviene ademas que será enteramente libre y permitido á los comerciantes, comandantes de buques y otros ciudadanos de ambos paises el manejar sus negocios por si mismos en todos los puertos y lugares sujetos á la jurisdiccion de uno ú otro, así respecto á las consignaciones y ventas por mayor y menor de sus efectos y mercaderias, como de la carga, descarga y despacho de sus buques, debiendo en todos estos casos ser tratados como ciudadanos del pais en que residan, ó al

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they reside, or at least to be placed on a footing with the subjects or citizens of the most favoured nation.

ART: 7.

The citizens of neither of the contracting parties shall be liable to any embargo, nor be detained with their vessels, cargoes, merchandize or effects for any military expedition not for any public or private purpose whatever, without allowing to those interested a sufficient indemnification

ART: 8.

Whenever the citizens of either of the contracting parties shall be forced to seek refuge or asylum in the rivers, bays, ports or dominions of the other with their vessels, whether merchants or of war, public or private, through stress of weather pursuit of pirates or enemies they shall be received and treated with humanity, giving to them all favour and protection for repairing their ships, procuring provisions, and placing themselves in a situation to continue their voyage without obstacle or hindrance of any kind.

ART. 9.

All the ships, merchandize and effects belonging to the citizens of one of the contracting parties which may be captured by pirates, whether within the limits of its

menos puestos sobre un pie igual con los súbditos ó ciudadanos de las naciones mas favorecidas.

ARTº 7º

Los ciudadanos de una ú otra parte no podran ser embargados ni detenidos con sus embarcaciones, tripulaciones, mercaderías y efectos comerciales de su pertenencia para alguna espedicion militar, usos públicos ó particulares cualesquiera que sean, sin conceder a los interesados una suficiente indemnizacion.

ARTº 8º

Siempre que los ciudadanos de alguna de las partes contratantes se vieren precisados á buscar refugio ó asilo en los rios, bahias, puertos ó dominios de la otra, con sus buques, ya sean mercantes ó de guerra, públicos ó particulares, por mal tiempo persecucion de piratas ó enemigos serán recibidos y tratados con humanidad dandoles todo favor y proteccion para reparar sus buques, procurar víveres y ponerse en situacion de continuar su viaje sin obstáculo ó estorbo de ningun genero.

ARTº 9º

Todos los buques, mercaderias y efectos pertenecientes á los ciudadanos de una de las partes contratantes que sean apresados por piratas, bien sea dentro de los

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jurisdiction or on the high seas, and may be carried or found in the rivers, roads, bays, ports or dominions of the other shall be delivered up to the owners, they proving in due and proper form their rights before the competent tribunals; it being well understood that the claim should be made within the term of one year by the parties themselves, their attornies, or agents of their respective Governments.

limites de su jurisdiccion ó en alta mar y fueren llevados ó hallados en los rios, radas bahias, puertos ó dominios de la otra, serán entregados á sus dueños probando estos en la forma propia y debida sus derechos ante los tribunales competentes; bien entendido que el reclamo ha de hacerse dentro del término de un año por las mismas partes, sus apoderados ó agentes de los respectivos Gobiernos.

ART: 10.

When any vessel belonging to the citizens of either of the contracting parties shall be wrecked foundered, or shall suffer any damage on the coasts or within the dominions of the other, there shall be given to them all assistance and protection, in the same manner which is usual and customary with the vessels of the nation where the damage happens, permitting them to unload the said vessel (if necessary) of its merchandize and effects without exacting for it any duty, impost, or contribution whatever, provided the same be exported.

ARTº 10º

Cuando algun buque perteneciente á los ciudadanos de alguna de las partes contratantes, naufrague, encalle ó sufra alguna averia en las costas ó dentro de los dominios de la otra, se les dará toda ayuda y proteccion del mismo modo que es uso y costumbre con los buques de la nacion en donde suceda la avería; permitiendoles descargar el dicho buque (si fuere necesario) de sus mercaderias y efectos sin cobrar por esto, con tal que ellos sean esportados, ningun derecho impuesto ó contribucion.

ART: 11.

The citizens of each of the contracting parties shall have power to dispose of their personal goods within the jurisdiction of the other by sale, donation, testament, or otherwise, and their representatives, being citizens of the

ARTº 11º

Los ciudadanos de cada una de las partes contratantes tendrán pleno poder para disponer de sus bienes personales dentro de la jurisdiccion de la otra por venta, donacion, testamento ó de otro modo; y sus representantes siendo

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other party shall succeed to their said personal goods, whether by testament or ab-intestato, and they may take possession thereof, by themselves or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country where said goods are or shall be subject to pay in like cases. And if in the case of real estate the said heirs would be prevented from entering into the possession of the inheritance on account of their character of aliens, there shall be granted to them the term of three years to dispose of the same as they may think proper and to withdraw the proceeds without molestation, and exempt from duties of of detraction on the part of the Government of the respective States.

ciudadanos de la otra parte, sucederán á sus dichos bienes personales, ya sea por testamento ó ab-intestato, y podrán tomar posesion de ellos, ya sea por sí mismos ó por otros que obren por ellos, y disponer de los mismos segun su voluntad, pagando aquellas cargas solamente que los habitantes del pais, en donde están los referidos bienes, estuvieren sugetos á pagar en iguales casos. Y si en el caso de bienes raices los dichos herederos fueren impedidos de entrar en la posesion de la herencia por razon de su caracter de estrangeros, se les dará el término de tres años para disponer de ella como juzguen conveniente y para estraer el producto sin molestia, y exentos de todo derecho de deduccion por parte del Gobierno de los respectivos Estados.

ART: 12.

Both the contracting parties promise and engage formally to give their special protection to the persons and property of the citizens of each other, of all occupations, who may be in the territories subject to the jurisdiction of the one or of the other, transient or dwelling therein, leaving open and free to them the tribunals of justice for their judicial recourse, on the same terms which are usual and customary with the natives or citizens of the country in which they may be; for which they may employ in defence of their rights such advocates, solici-

ARTº 12º

Ambas partes contratantes se comprometen y obligan formalmente á dar su proteccion especial á las personas y propiedades de los ciudadanos de cada una recíprocamente transeuntes ó habitantes de todas ocupasiones en los territorios sujetos á la jurisdiccion de una y otra, dejandoles abiertos y libres los tribunales de justicia para sus recursos judiciales en los mismos términos que son de uso y costumbre para los naturales ó ciudadanos del pais en que residan; para lo cual podrán emplear en defensa de sus derechos aquellos abogados, procuradores, escri-

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tors, notaries, agents and factors as they may judge proper in all their trials at law, and such citizens or agents shall have free opportunity to be present at the decisions and sentences of the tribunals in all cases which may concern them, and likewise at the taking of all examinations and evidence which may be exhibited in the said trials.

ART: 13.

It is likewise agreed that the most perfect and entire security of conscience shall be enjoyed by the citizens of both the contracting parties in the countries subject to the jurisdiction of the one and the other, without their being liable to be disturbed or molested on account of their religious belief, so long as they respect the laws and established usages of the country. Moreover, the bodies of the citizens of one of the contracting parties who may die in the territories of the other, shall be burried in the usual burying grounds or in other decent or suitable places, and shall be protected from violation or disturbance.

ART: 14.

It shall be lawful for the citizens of the United States of America and of the Republic of Guatemala to sail with their ships with all manner of liberty and security, no distinction being made who are

banos, agentes ó factores que juzguen conveniente en todos sus asuntos y litijios; y dichos ciudadanos ó agentes tendrán la libre facultad de estár presentes en las decisiones y sentencias de los tribunales en todos los casos que les conciernan como igualmente al tomar todos los examenes y declaraciones que se ofrezcan en los dichos litigios.

ARTº 13º

Se conviene igualmente en que los ciudadanos de ambas partes contratantes gocen la mas perfecta y entera seguridad de conciencia en los paises sujetos á la jurisdiccion de una ú otra sin quedar por ello espuestos á ser inquietados ó molestados en razon de su creencia relijiosa mientras que respeten las leyes y usos establecidos. Ademas de esto, podran sepultarse los cadávares de los ciudadanos de una de las partes contratantes, que fallecieren en los territorios de la otra en los cementerios acostumbrados, ó en otros lugares decentes y adecuados, los cuales serán protegidos contra toda violacion y trastorno.

ARTº 14º

Será lícito á los ciudadanos de los Estados Unidos de America y á los de la Republica de Guatemala, navegar con sus buques, con toda seguridad y libertad, de cualquiera puerto á las plazas ó

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the proprietors of the merchandize laden thereon, from any port to the places of those who now are or hereafter shall be at enmity with either of the contracting parties. It shall likewise be lawful for the citizens aforesaid to sail with the ships and merchandizes before mentioned, and to trade with the same liberty and security from the places, ports and havens of those who are enemies of both or either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy before mentioned, to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of one power or under several. And it is hereby stipulated that free ships shall also give freedom to goods, and that every thing shall be deemed to be free and exempt which shall be found on board the ships belonging to the citizens of either of the contracting parties although the whole lading, or any part thereof should appertain to the enemies of either, contraband goods being always excepted. It is also agreed, in like manner, that the same liberty be extended to persons who are on board a free ship, with this effect, that although they be enemies to both or either party, they are not to be taken out of that free ship, unless they are officers or soldiers and in the actual service of the enemies:

lugares de los que son ó fueren en adelante enemigos de cualquiera de las dos partes contratantes, sin hacerse distincion de quienes son los dueños de las mercaderías cargadas en ellos. Será igualmente lícito á los referidos ciudadanos navegar con sus buques y mercaderías mencionadas, y traficar con la misma libertad y seguridad en los lugares, puertos y ensenadas de los enemigos de ambas partes, ó de alguna de ellas sin ninguna oposicion ó disturbio cual quiera, no solo directamente de los lugares de enemigos arriba mencionados ó lugares neutros, sino tambien de un lugar perteneciente á un enemigo á otro enemigo, ya sea que esten bajo de la jurisdiccion de una potencia, ó bajo la de diversas. Y queda aquí estipulado que los buques libres dan tambien libertad á las mercaderías y que se ha de considerar libre y exento todo lo que se hallare á bordo de los buques pertenecientes á los ciudadanos de cualquiera de las partes contratantes, aunque toda la carga ó parte de ella pertenezca á enemigos de una ú otra, esceptuando siempre los artículos de contrabando de guerra. Se conviene tambien del mismo modo en que la misma libertad se estienda á las personas que se encuentren á bordo de buques libres, con el fin de que aunque dichas personas sean enemigos de ambas partes ó de alguna de ellas, no deban ser estraidas de los buques libres, á

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provided however, and it is hereby agreed, that the stipulations in this article contained, declaring that the flag shall cover the property, shall be understood as applying to those powers only who recognize this principle; but if either of the two contracting parties shall be at war with a third and the other neutral, the flag of the neutral shall cover the property of enemies whose governments acknowledge this principle and not of others.

menos que sean oficiales ó soldados en actual servicio de los enemigos: á condicion no obstante, y se conviene aquí en esto, que las estipulaciones contenidas en el presente artículo, declarando que el pabellon cubre la propiedad, se entenderán aplicables solamente á aquellas potencias que reconocen este principio; pero si alguna de las dos partes contratantes estuviere en guerra con una tercera, y la otra permaneciese neutral, la bandera de la neutral cubrirá la propiedad de los enemigos cuyos Gobiernos reconozcan éste principio y no de otros.

ART: 15.

It is likewise agreed, that in the case where the neutral flag of one of the contracting parties shall protect the property of the enemies of the other by virtue of the above stipulation, it shall always be understood that the neutral property found on board such enemy's vessels shall be held and considered as enemy's property and as such shall be liable to detention and confiscation, except such property as was put on board such vessel before the declaration of war, or even afterwards, if it were done without the knowledge of it; but the contracting parties agree, that two months having elapsed after the declaration, their citizens shall not plead ignorance thereof. On the contrary, if the flag of the neutral does not protect the enemies property, in that case

ARTº 15º

Se conviene igualmente que en el caso de que la bandera neutral de una de las partes contratantes, proteja las propiedades de los enemigos de la otra en virtud de lo estipulado arriba, deberá siempre entenderse que las propiedades neutrales encontradas á bordo de tales buques enemigos, han de tenerse y considerarse como propiedades enemigas, y como tales, estarán sujetas á detencion y confiscacion; esceptuando solamente aquellas propiedades que hubiesen sido puestas á bordo de tales buques ántes de la declaracion de la guerra, y aun despues, si hubiesen sido embarcadas en dichos buques sin tener noticia de la guerra; y se conviene, que pasados dos meses despues de la declaracion, los ciudadanos de una y otra parte no podran alegar

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the goods and merchandizes of the neutral, embarked in such enemy's ship shall be free.

ART: 16.

This liberty of navigation and commerce shall extend to all kinds of merchandizes, excepting those only which are distinguished by the name of contraband, and under this name of contraband or prohibited goods shall be comprehended.

1st—Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fuzees, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberds, and granades, bombs, powder, matches, balls, and all other things belonging to the use of these arms.

2dly—Bucklers, helmets, breastplates, coats of mail, infantry belts and clothes made up in the form and for a military use.

3dly—Cavalry belts and horses with their furniture.

4dly—And generally all kinds of arms and instruments of iron, steel, brass and copper or of any other materials manufactured, prepared and formed expressly to make war by sea or land.

ART: 17.

All other merchandize and things not comprehended in the

que la ignoraban. Por el contrario, si la bandera neutral no protegiese las propiedades enemigas, entonces serán libres los efectos y mercaderías de la parte neutral, embarcadas en buques enemigos.

ARTº 16º

Esta libertad de navegacion y comercio se estenderá á todo genero de mercaderías, esceptuando aquellas solamente que se distinguen con el nombre de contrabando, y bajo este nombre de contrabando ó efectos prohibidos se comprenderán.

1º Cañones, morteros, obuses, pedreros, trabucos, mosquetes, fusiles, rifles, carabinas, pistolas, picas, espadas, sables, lanzas, chuzos, alabardas y granadas, bombas, pólvora, mechas, balas con las demas cosas correspondientes al uso de estas armas.

2º—Escudos, casquetes, corazas, cotas de malla fornituras y vestidos hechos en forma, y á usanza militar.

3º Bandoleras y caballos junto con sus armas y arneses.

4º Y generalmente toda especie de armas é instrumentos de hierro, acero, bronce, cobre, y otras materias cualesquiera manufacturadas, preparadas y formadas espresamente para hacer la guerra por mar ó tierra.

ARTº 17º

Todas las demas mercaderías y efectos no comprendidos en los

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articles of contraband explicitly enumerated and classified as above, shall be held and considered as free and subjects of free and lawful commerce, so that they may be carried and transported in the freest manner by both the contracting parties, even to places belonging to an enemy, excepting only those places which are at that time besieged or blockaded; and to avoid all doubt in this particular, it is declared that those places only are besieged or blockaded which are actually attacked by a belligerent force capable of preventing the entry of the neutral.

artículos de contrabando esplicitamente enumerados, y clasificados en el artículo anterior, seran tenidos y reputados por libres, y de lícito y libre comercio, de modo que ellos puedan ser transportados y llevados de la manera mas libre por los ciudadanos de ambas partes contratantes, aun á los lugares pertenecientes á un enemigo de una ú otra, esceptuando solamente aquellos lugares ó plazas que estan al mismo tiempo sitiadas ó bloqueadas: y para evitar toda duda en el particular se declaran sitiadas ó bloqueadas aquellas plazas que en la actualidad estuviesen atacadas por una fuerza de un beligerante capaz de impedir la entrada del neutral.

ART: 18.

The articles of contraband before enumerated and classified, which may be found in a vessel bound for an enemy's port, shall be subject to detention and confiscation, leaving free the rest of the cargo and the ship, that the owners may dispose of them as they see proper. No vessel of either of the two nations shall be detained on the high seas on account of having on board articles of contraband, whenever the master captain or supercargo of said vessel will deliver up the articles of contraband to the captor unless the quantity of such articles be so great and of so large a bulk that they cannot be received on board

ARTº 18º

Los artículos de contrabando ántes enumerados y clasificados, que se hallen en un buque destinado á puerto enemigo estarán sujetos á detencion y confiscacion, dejando libre el resto del cargamento y el buque, para que los dueños puedan disponer de ellos como lo crean conveniente. Ningun buque de cualquiera de las dos naciones será detenido por tener á bordo artículos de contrabando, siempre que el maestre, capitan ó sobre-cargo de dicho buque quiera entregar los artículos de contrabando al apresador á ménos que la cantidad de estos artículos sea tan grande y de tanto volúmen que no puedan

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the capturing ship without great inconvenience; but in this and in all other cases of just detention, the vessel detained shall be sent to the nearest convenient and safe port for trial and judgement according to law.

ART: 19.

And whereas it frequently happens that vessels sail for a port or place belonging to an enemy, without knowing that the same is besieged blockaded or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place; but shall not be detained, nor shall any part of her cargo, if not contraband be confiscated unless after warning of such blockade or investment from the commanding officer of the blockading forces she shall again attempt to enter; but she shall be permitted to go to any other port or place she shall think proper. Nor shall any vessel of either of the parties that may have entered into such port or place before the same was actually besieged, blockaded or invested by the other be restrained from quitting such place with her cargo, nor if found therein, after the reduction and surrender, shall such vessel or her cargo be liable to confiscation, but they shall be restored to the owners thereof.

ser recibidos á bordo del buque apresador sin grandes inconvenientes; pero en este como en todos los otros casos de justa detencion, el buque detenido será enviado al puerto mas inmediato, cómodo y seguro para ser juzgado y sentenciado conforme á las leyes.

ARTº 19º

Y por cuanto frecuentemente sucede que los buques navegan para un puerto ó lugar perteneciente á un enemigo sin saber que aquel esté sitiado, bloqueado ó embestido, se conviene en que todo buque en estas circunstancias se pueda hacer volver de dicho puerto ó lugar, pero no será detenido, ni confiscada parte alguna de su cargamento no siendo de contrabando; á menos que despues de la intimacion de semejante bloqueo ó ataque por el comandante de las fuerzas bloqueadoras intentase otra vez entrar; pero le será permitido ir á cualquiera otro puerto ó lugar que juzgue conveniente. Ni ningun buque de una de las dos partes que haya entrado en semejante puerto ó lugar ántes que estuviese sitiado, bloqueado ó embestido por la otra, será impedido de dejar el tal lugar con su cargamento, ni si fuere hallado allí despues de la rendicion y entrega de semejante lugar estará el tal buque ó su cargamento sujeto á confiscacion sino que serán restituidos á sus dueños.

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ART: 20.

In order to prevent all kind of disorder in the visiting and examination of the ships and cargoes of both the contracting parties on the high seas, they have agreed, mutually, that whenever a vessel of war, public or private shall meet with a neutral of the other contracting party, the first shall remain out of cannon shot, and may send its boat with two or three men only in order to execute the said examination of the papers concerning the ownership and cargo of the vessel without causing the least extortion, violence or ill treatment, for which the commanders of the said armed ships shall be responsible with their persons and property; for which purpose the commanders of the said private armed vessels shall before receiving their commissions, give sufficient security to answer for all the damages they may commit. And it is expressly agreed, that the neutral party shall in no case be required to go on board the examining vessel for the purpose of exhibiting her papers, or for any other purpose whatever.

ARTº 20º

Para evitar todo genero de desorden en la visita y exámen de los buques y cargamentos de ambas partes contratantes, en alta mar, han convenido mútuamente que siempre que un buque de guerra, público ó particular se encontrase con un neutral de la otra parte contratante, el primero permanecerá fuera de tiro de cañon y podrá mandar su bote con dos ó tres hombres solamente para ejecutar el dicho exámen de los papeles concernientes á la propiedad y carga del buque sin ocasionar la menor estorsion, violencia ó maltratamiento, por lo que los comandantes del dicho buque armado serán responsables con sus personas y bienes; á cuyo efecto los comandantes de buques armados por cuenta de particulares estarán obligados antes de entregarseles sus comisiones ó patentes á dar fianza suficiente para responder á los perjuicios que causen. Y se ha convenido espresamente que en ningun caso se exigirá á la parte neutral que vaya á bordo del buque examinador con el fin de exhibir sus papeles ó para cualquiera otro objeto sea el que fuere.

ART: 21.

To avoid all kind of vexation and abuse in the examination of the papers relating to the ownership of the vessels belonging to the citizens of the two contracting

ARTº 21º

Para evitar toda clase de vejámen y abuso en el examen de los papeles relativos á la propiedad de los buques pertenecientes á los ciudadanos de las dos partes contra-

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parties, they have agreed and do agree, that in case one of them should be engaged in war, the ships and vessels belonging to the citizens of the other, must be furnished with sea-letters or passports, expressing the name, property and bulk of the ship, as also the name and place of habitation of the master or commander of said vessel, in order that it may thereby appear that the ship really and truly belongs to the citizens of one of the parties; they have likewise agreed that such ships, being laden, besides the said sea-letters or passports, shall also be provided with certificates containing the several particulars of the cargo and the place whence the ship sailed, so that it may be known whether any forbidden or contraband goods be on board the same; which certificates shall be made out by the officers of the place whence the ship sailed in the accustomed form; without which requisites said vessel may be detained, to be adjudged by the competent tribunal, and may be declared legal prize, unless the said defect shall be satisfied or supplied by testimony entirely equivalent.

ART: 22.

It is further agreed, that the stipulations above expressed relative to the visiting and examination of vessels, shall apply only to those which sail without convoy;

tantes han convenido y convienen, que en caso de que una de ellas estuviere en guerra, los buques y bajeles pertenecientes á los ciudadanos de la otra, serán provistos con letras de mar ó pasaportes espresando el nombre, propiedad y tamaño del buque, como tambien el nombre y lugar de la residencia del maestre ó comandante á fin de que se vea que el buque real y verdaderamente pertenece á los ciudadanos de una de las partes; y han convenido igualmente que estando cargados los espresados buques ademas de las letras de mar ó pasaportes, estarán tambien provistos de certificados que contengan los pormenores del cargamento y el lugar de donde salió el buque, para que así pueda saberse si hay á su bordo algunos efectos prohibidos ó de contrabando, cuyos certificados seran hechos por los oficiales del lugar de la procedencia del buque en la forma acostumbrada, sin cuyos requisitos el dicho buque puede ser detenido para ser juzgado por el tribunal competente, y puede ser declarado buena presa, á menos que satisfagan ó suplan el defecto con testimonios enteramente equivalentes.

ARTº 22º

Se ha convenido ademas que las estipulaciones anteriores, relativas al exámen y visita de buques se aplicarán solamente á los que navegan sin convoy; y que cuando

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and when said vessels, shall be under convoy, the verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag he carries, and when they are bound to an enemy's port that they have no contraband goods on board shall be sufficient.

los dichos buques estuvieren bajo de convoy, será bastante la declaracion verbal del comandante del convoy bajo su palabra de honor de que los buques que estan bajo su proteccion pertenecen á la nacion cuya bandera llevan, y cuando se dirijan á un puerto enemigo, que los dichos buques no tienen á su bordo artículos de contrabando de guerra.

ART: 23.

It is further agreed, that in all cases the established courts for prize causes in the country to which the prizes may be conducted shall alone take cognizance of them. And whenever such tribunal of either party shall pronounce judgement against any vessel or goods or property claimed by the citizens of the other party, the sentence or decree shall mention the reasons or motives on which the same shall have been founded, and an authenticated copy of the sentence or decree and of all the proceedings in the case, shall, if demanded, be delivered to the commander or agent of said vessel without any delay he paying the legal fees for the same.

ARTº 23º

Se ha convenido ademas, que en todos los casos que ocurran, solo los tribunales establecídos para causas de presa, en el pais á que las presas sean conducidas tomarán conocimiento de ellas. Y siempre que semejante tribunal de cualquiera de las partes, pronunciase sentencia contra algun buque, ó efectos ó propiedad reclamada por los ciudadanos de la otra parte, la sentencia ó decreto hará mencion de las razones ó motivos en que aquella se haya fundado, y se entregará sin demora alguna al comandante ó agente de dicho buque, si lo solicitase, un testimonio auténtico de la sentencia ó decreto, ó de todo el proceso pagando por él los derechos legales.

ART: 24.

Whenever one of the contracting parties shall be engaged in war with another State, no citizen of the other contracting party shall accept a commission or letter of

ARTº 24º

Siempre que una de las partes contratantes estuviere empeñada en guerra con otro Estado, ningun ciudadano de la otra parte contratante aceptará una comi-

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marque for the purpose of assisting or cooperating hostilely with the said enemy against the said party so at war, under the pain of being treated as a pirate.

ART: 25.

If by any fatality, which cannot be expected and which God forbid, the two contracting parties should be engaged in a war with each other, they have agreed and do agree, now for then, that there shall be allowed the term of six months to the merchants residing on the coasts and in the ports of each other, and the term of one year to those who dwell in the interior, to arrange their business and transport their effects wherever they please, giving to them the safe conduct necessary for it, which may serve as a sufficient protection until they arrive at the designated port. The citizens of all other occupations who may be established in the territories or dominions of the United States of America and of the Republic of Guatemala shall be respected and maintained in the full enjoyment of their personal liberty and property, unless their particular conduct shall cause them to forfeit this protection, which in consideration of humanity, the contracting parties engage to give them.

sion ó letra de marca para el objeto de ayudar ó cooperar hostílmente con dicho enemigo, contra la dicha parte que esté así en guerra, bajo la pena de ser tratado como pirata.

ARTº 25º

Si por alguna fatalidad que no puede esperarse, y que Dios no permita, las dos partes contratantes se viesen empeñadas en guerra una con otra, han convenido y convienen de ahora para entónces que se concederá el término de seis meses á los comerciantes residentes en las costas y en los puertos de entrambas, y el término de un año á los que habitan en el interior para arreglar sus negocios y transportar sus efectos adonde quieran, dandoles el salvo conducto necesario para ello que le sirva de suficiente proteccion hasta que lleguen al puerto que designen. Los ciudadanos de otras ocupaciones que se hallen establecidos en los territorios ó dominios de los Estados Unidos de América ó de la República de Guatemala seran respetados y mantenidos en el pleno goce de su libertad personal y propiedad, á ménos que su conducta particular les haga perder esta proteccion que en consideracion á la humanidad las partes contratantes se comprometen á prestarles.

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ART: 26.

Neither the debts due from individuals of the one nation to individuals of the other nor shares nor moneys which they may have in public funds or in public or private banks, shall ever in any event of war or of national difference, be sequestered or confiscated.

ART: 27.

Both the contracting parties being desirous of avoiding all inequality in relation to their public communications and official intercourse, have agreed and do agree, to grant to the Envoys, Ministers and other public agents the same favours immunities and exemptions which those of the most favoured nation do or shall enjoy; it being understood that whatever favours, immunities or privileges the United States of America or the Republic of Guatemala may find it proper to give to the Ministers and public agents of any other power, shall, by the same act, be extended to those of each of the contracting parties.

ART: 28.

To make more effectual the protection which the United States of America and the Republic of Guatemala shall afford in future to the navigation and commerce of the citizens of each other, they agree

ART: 26º

Ni las deudas contraidas por los individuos de una nacion con los individuos de la otra, ni las acciones ó dineros que puedan tener en los fondos públicos, ó en los bancos públicos ó privados serán jamas secuestrados ó confiscados en ningun caso de guerra ó diferencia nacional.

ARTº 27º

Deseando ambas partes contratantes evitar toda diferencia relativa á etiqueta en sus comunicaciones y correspondencias diplomáticas han convenido y convienen asímismo, en conceder á sus Enviados, Ministros y otros agentes diplomáticos los mismos favores, inmunidades y exenciones de que gozan ó gozaren en lo venidero los de las naciones mas favorecidas, bien entendido que cualquier favor, inmunidad ó privilegio que los Estados Unidos de America ó la República de Guatemala tengan por conveniente dispensar á los Enviados, Ministros y agentes diplomáticos de otras potencias se haga por el mismo hecho estensivo á los de una y otra de las partes contratantes.

ARTº 28º

Para hacer mas efectiva la proteccion que los Estados Unidos de América y la República de Guatemala, darán en adelante á la navegacion y comercio de los ciudadanos de una y otra, se convienen en

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to receive and admit Consuls and Vice consuls in all the ports open to foreign commerce, who shall enjoy in them all the rights, prerogatives and inmunities of the Consuls and Vice consuls of the most favoured nation; each contracting party, however, remaining at liberty to except those ports and places in which the admision and residence of such Consuls and Vice consuls may not seem convenient.

ART: 29.

In order that the Consuls and Vice-consuls of the two contracting parties may enjoy the rights, prerogatives and inmunities which belong to them by their public character, they shall before entering on the exercise of their functions exhibit their commission or patent in due form to the Government to which they are accredited; and having obtained their exequatur they shall be held and considered as such by all the authorities, magistrates, and inhabitants in the consular district in which they reside.

ART: 30.

It is likewise agreed that the Consuls, their Secretaries, officers and persons attached to the service of Consuls, they not being citizens of the country in which the Consul resides, shall be exempt from all public service, and also from all kind of taxes, im-

recibir y admitir Cónsules y Vice cónsules en todos los puertos abiertos al comercio estrangero, quienes gozarán en ellos todos los derechos, prerogativas é inmunidades de los Cónsules y Vice consules de la nacion mas favorecida; quedando no obstante en libertad cada parte contratante para esceptuar aquellos puertos y lugares en que la admision y residencia de semejantes Cónsules y Vice cónsules no parezca conveniente.

ARTº 29º

Para que los Cónsules y Vice cónsules de las dos partes contratantes, puedan gozar los derechos, prerogativas é inmunidades que les corresponden por su carácter público ántes de entrar en el ejercicio de sus funciones, presentarán su comision ó patente en la forma debida al Gobierno, con quien estén acreditados, y habiendo obtenido el exequatur, serán tenidos y considerados como tales por todas las autoridades, majistrados y habitantes del distrito consular en que residan.

ARTº 30º

Se ha convenido igualmente, que los Consules, sus Secretarios, oficiales y personas agregadas al servicio de los consulados (no siendo estas personas ciudadanos del pais en que el Consul reside), estarán escentos de todo servicio público y tambien de toda especie

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posts and contributions, except those which they shall be obliged to pay on account of commerce or their property, to which the citizens and inhabitants, native and foreign of the country in which they reside are subject; being in every thing besides subject to the laws of the respective States. The archives and papers of the consulate shall be respected inviolably, and under no pretext whatever shall any magistrate seize or in any way interfere with them.

de pechos, impuestos y contribuciones, esceptuando aquellos que estén obligados á pagar por razon de comercio ó propiedad, y á los cuales están sugetos los ciudadanos y habitantes naturales y estrangeros del pais en que residen, quedando en todo lo demas sujetos á las leyes de los respectivos Estados. Los archivos y papeles de los consulados serán respetados inviolablemente, y bajo ningun pretesto los ocupará magistrado alguno, ni tendrá en ellos ninguna intervencion.

ART: 31.

The said Consuls shall have power to require the assistance of the authorities of the country for the arrest, detention and custody of deserters from the public and private vessels of their country, and for that purpose they shall address themselves to the courts, judges and officers competent, and shall demand the said deserters in writing, proving by an exhibition of the registers of the vessel's or ship's roll, or other public documents, that those men were part of the said crews, and on this demand so proved, (saving however where the contrary is proved), the delivery shall not be refused. Such deserters when arrested shall be put at the disposal of the said Consuls, and may be put in the public prisons at the request and expense of those who reclaim them, to be

ART: 31º

Los dichos Cónsules tendrán poder de requerir el ausilio de las autoridades locales, para la prision, detencion y custodia de los desertores de buques públicos y particulares de su pais, y para este objeto se dirijirán á los tribunales, jueces y oficiales competentes, y pedirán los dichos desertóres por escrito probando por una presentacion de los registros de los buques, rol del equipaje ú otros documentos públicos, que aquellos hombres eran parte de las dichas tripulaciones, y á esta demanda así probada (ménos no obstante cuando se probare lo contrario), no se rehusará la entrega. Semejantes desertóres luego que sean arrestados, se pondrán á disposicion de los dichos Cónsules, y pueden sér depositados en las prisiones públicas á solicitud y espensas de los que los reclamen para

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sent to the ships to which they belonged or to others of the same nation. But if they be not sent back within two months, to be counted from the day of their arrest, they shall be set at liberty, and shall be no more arrested for the same cause.

ART: 32.

For the purpose of more effectually protecting their commerce and navigation, the two contracting parties do hereby agree, as soon hereafter as circumstances will permit, to form a consular convention, which shall declare specially the powers and inmunities of the Consuls and Viceconsuls of the respective parties.

ART: 33.

The United States of America and the Republic of Guatemala desiring to make as durable as circumstances will permit the relations which are to be established between the two parties by virtue of this treaty or general convention of peace, amity, commerce and navigation have declared solemnly, and do agree to the following points.

1st The present treaty shall remain in full force and virtue for the term of twelve years, to be counted from the day of the exchange of the ratifications, and further until the end of one year after either of the contracting parser enviados á los buques á que corresponden, ó á otros de la misma nacion. Pero sino fueren mandados dentro de dos meses contados desde el dia de su arresto, serán puestos en libertad y no volverán á ser presos por la misma causa.

ARTº 32º

Para proteger mas efectivamente su comercio y navegacion, las dos partes contratantes se convienen en formar, luego que las circunstancias lo permitan, una convencion cónsular que declare mas especialmente los poderes é inmunidades de los Cónsules y Vice cónsules de las partes respectivas.

ARTº 33º

Los Estados Unidos de America y la República de Guatemala deseando hacer tan duraderas y firmes como las circunstancias lo permitan, las relaciones que han de establecerse entre las dos potencias, en virtud del presente tratado ó convencion general de paz, amistad, navegacion y comercio, han declarado solemnemente, y convienenen en los puntos siguientes.

1º El presente tratado permanecerá en su fuerza y vigor por el término de doce años, contados desde el dia del cange de las ratificaciones, y ademas hasta un año despues que cualquiera de las partes contratantes haya notificado á

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ties shall have given notice to the other of its intention to terminate the same; each of the contracting parties reserving to itself the right of giving such notice to the other at the end of said term of twelve years; and it is hereby agreed between them that on the expiration of one year after such notice shall have been received by either from the other party, this treaty in all its parts relative to commerce and navigation, shall altogether cease and determine, and in all those parts which relate to peace and friendship, it shall be perpetually binding on both powers.

2dly If any one or more of the citizens of either party shall infringe any of the articles of this treaty such citizen shall be held personally responsible for the same, and the harmony and good correspondence between the nations shall not be interrupted thereby; each party engaging in no way to protect the offender or sanction such violation.

3dly If (which indeed cannot be expected) unfortunately, any of the articles contained in the present treaty shall be violated or infringed in any other way whatever, it is expressly stipulated that neither of the contracting parties will order or authorize any acts of reprisal, nor declare war against the other, on complaints of injuries or damages, until the said

la otra su intencion de terminarlo; reservandose las partes contratantes el derecho de hacer tal notificacion la una á la otra al fin de dicho término de doce años. Y ademas se ha convenido que este tratado en todo lo relativo á comercio y navegacion, quedará sin efecto, trascurrido que sea un año despues de recibida dicha notificacion por cualquiera de las dos partes, y en todo lo relativo á paz y amistad será perpetuamente obligatorio á ambos poderes.

2º Si alguno ó algunos de los ciudadanos de una ú otra parte infringiesen alguno de los artículos contenidos en el presente tratado, dichos ciudadanos serán personalmente responsables, sin que por esto se interrumpa la armonía y buena correspondencia entre las dos naciones, comprometiendose cada una á no proteger de modo alguno al ofensor ó sancionar semejante violacion.

3º Si (lo que á la verdad no puede esperarse) desgraciadamente, alguno de los artículos contenidos en el presente tratado fuesen en alguna otra manera violados ó infringidos, se estipula espresamente: que ninguna de las dos partes contratantes ordenará ú autorizará ningunos actos de represalía ni declarará la guerra contra la otra por quejas de

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party considering itself offended shall first have presented to the other a statement of such injuries or damages verified by competent proof, and demanded justice and satisfaction, and the same shall have been either refused or unreasonably delayed.

4dly Nothing in this treaty contained shall, however be construed or operate contrary to former and existing public treaties with other Sovereigns or States

The present Treaty of peace, amity commerce and navigation shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by the Government of the Republic of Guatemala, and the ratifications shall be exchanged in the City of Washington or Guatemala within *eighteen* months counted from the date of the signature hereof, or sooner if possible.

In faith whereof we the Plenipotentiaries of the United States of America and of the Republic of Guatemala have signed and sealed these presents, in the City of Guatemala this third day of March in the year of our Lord One thousand eight hundred and forty nine.

[Seal] Elijah Hise
[Seal] J. Mariano Rodriguez

injurias ó daños, hasta que la parte que se crea ofendida, haya antes presentado á la otra una esposicion de aquellas injurias ó daños verificada con pruebas y testimonios competentes, exigiendo justicia y satisfaccion, y esto haya sido negado ó diferido sin razon.

4º Nada de cuanto se contiene en el presente tratado, se construirá sin embargo, ni obrará en contra de otros tratados públicos anteriores y existentes con otros Soberanos ó Estados.

El presente tratado de paz, amistad comercio y navegacion será ratificado por el Presidente de los Estados Unidos de América y por el Gobierno de la República de Guatemala, con consejo y consentimiento de las respectivas camaras, y las ratificaciones serán cangeadas en la Ciudad de Washington ó Guatemala dentro de *diez* y *ocho* meses contados desde este dia, ó antes si fuere posible.

En fé de lo cual nosotros los Plenipotenciarios de los Estados Unidos de America y de la República de Guatemala hemos firmado y sellado las presentes, en la Ciudad de Guatemala el dia tres de Marzo del año de nuestro Señor Mil ochoscientos cuarenta y nueve.

[Seal] J. Mariano Rodriguez
[Seal] Elijah Hise

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NOTES

Following various precedents of earlier negotiations, this agreement is called in its heading a "General Convention" and in the preamble and in Article 33 "a treaty or general convention"; but more frequently it is referred to simply as a "treaty" (e.g., Article 33).

The signed original of this treaty is written in English and Spanish, with the English version on the left pages and the Spanish on the right. As the printed text shows, the United States is named first therein throughout; but the two Plenipotentiaries signed under the respective versions in alternate order corresponding with the languages.

The original instrument of ratification on the part of Guatemala, under date of March 20, 1849, is a paper similar to, and apparently in the same handwriting as, the signed original treaty. It contains the treaty text in English and Spanish, with the English version on the left pages; and throughout both versions, except in the Spanish of Articles 1 and 2, the United States is named first. Preceding the heading of the Spanish version, and following the conclusion of the Spanish, are written the recitals and other clauses of the original ratification on the part of Guatemala, under the great seal of that Republic. This Guatemalan instrument of ratification is bound with the duplicate United States instrument of ratification of November 14, 1850, and the original proclamation of July 28, 1852.

There is also in the treaty file (bound in red velvet) an authenticated copy of the Guatemalan instrument of ratification, which includes both versions of the treaty (the Spanish in the left columns) as in the original Guatemalan ratification. The authentication of this paper is dated May 8, 1852, and is signed by the Secretary of State and of Foreign Relations of Guatemala (José Mariano Rodriguez) under the seal of his office.

Although both the duplicate United States instrument of ratification of November 14, 1850, and the original proclamation of July 28, 1852, refer to the original treaty as "hereunto annexed", those two documents are, as above mentioned, bound with the original Guatemalan instrument of ratification of March 20, 1849, and not with the signed original treaty.

Among other papers in the treaty file are the three attested resolutions of the Senate of September 24, 1850, September 27, 1850, and June 7, 1852 (Executive Journal, VIII, 247, 258, 394–95), and two examples of the certificate of the exchange of ratifications at Guatemala on May 13, 1852, one in English and one in Spanish.

The treaty file also contains the original full power given under date of February 26, 1852, by the Government of Guatemala to Señor Don Felipe Molina, Chargé d'Affaires at Washington, to exchange the ratifications of the treaty; but that authority was not exercised, as the exchange took place at Guatemala. Annexed to the original full power is a translation thereof which, in view of the somewhat unusual character of the instrument, is here printed. The impression of the great seal on this full power is somewhat larger than that on the Guate-

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malan instrument of ratification, but the device is similar and also the wording: "REPUBLICA DE GUATEMALA" and (on the shield) "15. DE SEPTIEMBRE DE 1821".

The Secretaries of the Government, exercising the Executive Power of the Republic of Guatemala during the temporary absence of His Excellency the President of the Republic, agreeably to the provisions of Article 9 of the Constitutive Act:

Whereas the Treaty of Friendship, Commerce, and Navigation between the Republic of Guatemala and the United States of North America concluded, signed, and sealed on the third March of one thousand eight hundred and forty-nine, has been approved and ratified;

Wherefore, and inasmuch as the term of eighteen months designated in the aforesaid treaty in order to effect the exchange of the ratifications has elapsed, the Government of the Republic, being desirous that an act which is to be efficaciously instrumental in strengthening the friendly relations between the two countries should be performed, has resolved to authorize in a full manner, for this specific purpose, Señor Don Felipe Molina, Chargé d'Affaires of Guatemala in the United States, that he may exchange the ratifications of the above-mentioned Treaty of Friendship, Commerce, and Navigation between the Republic of Guatemala and the United States of North America, the circumstance alluded to, as to the previously designated term having elapsed, notwithstanding.

In faith whereof these presents are now issued, signed by the undersigned Secretaries of the Government, exercising the Executive Power, sealed with the great seal of the Republic, and countersigned by the Secretary of State in the Department of Foreign Relations, on the twenty-sixth day of the month of February of one thousand eight hundred and fifty-two.

[Seal] MANL FRANCO PAVON J. MARNO RODRIGUEZ JOSE NAJERA

The Secretary of State in the Department of Foreign Affairs:
J. MARNO RODRIGUEZ

THE SENATE PROCEEDINGS

This treaty was submitted to the Senate with the long presidential message of March 19, 1850, in which relations with Nicaragua, Costa Rica, Honduras, El Salvador, and Guatemala were discussed (Executive Journal, VIII, 153–58; printed in the notes to Document 141). That message of President Taylor was received in the Senate on March 25, and, with the four treaties which accompanied it (three submitted for Senate action and one communicated for information, respectively, numbers 1, 5, 6, and 4 below), was ordered printed in confidence for the use of the Senate on April 10, 1850 (*ibid.*, 163); but no copy of that print is now available.

The message mentions six treaties which had been signed with four of the countries of Central America (all but Costa Rica); but for the most part their dates are not given, and they are thus somewhat difficult of identification. The treaties referred to are as follows:

1. This treaty with Guatemala of March 3, 1849, which was submitted to the Senate and which went into force.

2. The Treaty of Peace, Amity, Commerce, and Navigation with Honduras of May 28, 1849 (D.S., Unperfected V1), which was negotiated and signed at Guatemala by Elijah Hise, "Chargé d'Affaires of the United States of America to the Republic of Guatemala", but which was neither submitted nor communicated to the Senate and did not go into force. Its provisions were almost the same as those of the

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treaty with the Central American Federation of December 5, 1825 (Document 50), except for the omission of Article 32 of that treaty.

3. The Treaty of Peace, Amity, Commerce, and Navigation with Nicaragua of May 31, 1849 (D.S., Unperfected S2), which was negotiated and signed at Guatemala by Hise, but which was neither submitted nor communicated to the Senate and did not go into force. Its provisions were almost the same as those of the treaty with the Central American Federation of December 5, 1825 (Document 50).

4. The treaty with Nicaragua of June 21, 1849, relative to the construction of a ship canal (D.S., Unperfected T2), which was negotiated at Guatemala by Hise. That treaty was disapproved by both Governments (Executive Journal, VIII, 157); it was not submitted to the Senate, although a copy of it was transmitted for the information of the Senate with the message of March 19, 1850; and it did not go into force.

5. The Treaty of Amity, Navigation, and Commerce with Nicaragua of September 3, 1849 (D.S., Unperfected U2), which was negotiated and signed at León by Ephraim George Squier, successor of Hise as Chargé d'Affaires to Guatemala, and which was submitted to the Senate with the message of March 19, 1850. The Senate took no final action on that treaty, and it did not go into force. The basis of the treaty was that with the Central American Federation of December 5, 1825 (Document 50), but it contained various alterations and additions. Article 35 provided that the right of way across Nicaragua should be open to the United States and contained a guaranty on the part of the United States of the neutrality of the line of a proposed canal across Nicaragua.

6. The Treaty of Amity, Navigation, and Commerce with El Salvador of January 2, 1850 (Document 139), which was negotiated and signed at León by Squier, and which was submitted to the Senate with the message of March 19, 1850, and went into force. Its provisions were almost literally the same as those of the treaty with Nicaragua of September 3, 1849, except for the omission of Article 35 of that treaty.

The first four of the mentioned treaties were negotiated and signed by Elijah Hise; but in negotiating three of them, that with Honduras of May 28, 1849, and those with Nicaragua of May 31 and June 21, 1849, Hise acted without full powers and contrary to his instructions. Hise was recalled on May 2, 1849 (see Executive Journal, VIII, 156); it seems, however, that he "voluntarily returned home" before receiving his letter of recall (*ibid.*, 110).

The term allowed for the exchange of ratifications of this treaty was eighteen months from the date of signature, or until September 3, 1850; that period had expired when the Senate resolution of advice and consent was adopted (September 24); accordingly, on September 27 a further resolution was adopted, reciting the facts and consenting to the exchange of ratifications at any time prior to April 1, 1851 (*ibid.*, 258).

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The Guatemalan Ratification

This treaty was ratified by the Government of Guatemala on March 20, 1849, seventeen days after its signature. A despatch of Hise of that date mentions the fact of ratification as follows (D.S., 1 Despatches, Guatemala, No. 7):

> I deem it proper to inform you that since my despatch of date the 28th February past, I have procured the approval of a treaty by the Executive Council of the Existing provisional Government of this State, or in other words, its ratification in the form required by the laws and usage of this Country.

The Guatemalan instrument of ratification, the original of which is in the treaty file, reads in translation as follows:

> Mariano Paredes, President *ad Interim* of the Republic of Guatemala
>
> Whereas between the Republic of Guatemala and the United States of America there has been concluded and signed in this capital the third day of the present month of March, by Plenipotentiaries duly authorized by both parties, a Treaty of Friendship, Commerce, and Navigation, which comprises a preamble and thirty-three articles, the tenor of which, word for word, is as follows:
>
> [Here follows the text of the treaty in English and Spanish]
>
> Now, therefore, having found the preamble and thirty-three articles, of which the foregoing treaty consists, to be conformable to the instructions given, and using the powers granted to the Government by the laws and especially by that of July 27, 1841, I have deemed fit to approve and ratify, as by these presents I approve and ratify, the same, promising that on the part of this Republic it will be exactly and faithfully observed.
>
> In faith whereof I have caused these presents to be drawn up, signed by my hand, sealed with the great seal of the Republic, and countersigned by the Secretary of State and of the Department of Foreign Relations at Guatemala the twentieth day of the month of March, one thousand eight hundred and forty-nine.
>
> [Seal] Mariano Paredes
>
> The Secretary of State and of the Department of Foreign Relations:
> J. Mariano Rodriguez

Approval of the ratification of this treaty (and of treaties with Great Britain, France, Belgium, and the Hanseatic Cities, and of an extradition convention with Mexico) was given by Decree No. 54 of the Constituent Assembly of Guatemala of September 3 (signed by the President of Guatemala September 5), 1851. Two printed copies of that decree are in the treaty file.

Although nothing appears in the despatches with regard to the delivery to Hise of the Guatemalan instrument of ratification executed on March 20, 1849, the wording of the certification of the authenticated copy of that ratification which is in the treaty file and which has been described above, indicates that the original instrument of ratification was delivered to Hise at some time prior to June 26, 1849, when he left Guatemala for the United States. Those words of certification read in translation as follows:

> The undersigned, Secretary of State and of Foreign Relations of the Government of the Republic of Guatemala, certifies that the foregoing copy of the treaty concluded and signed on March 3, 1849, between Plenipotentiaries of the United States and of Guatemala, and likewise of the ratification on the part of the

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Government of the latter, is throughout exact and the same as that which, as the first copy and with the original ratification, was delivered to Mr. Elijah Hise, Chargé d'Affaires of the United States, in order that he might take the same, to the end that the exchange of ratifications might be effected; and in order that this may take place by virtue of the arrival in this city of Mr. John Bozman Kerr, Chargé d'Affaires of the United States and special commissioner for this purpose, these presents have been drawn up by order of His Excellency the President.

It seems, accordingly, that the delivery by the Government of Guatemala to Hise of the original instrument of ratification, was merely for transmission to an agent of the Government of Guatemala at Washington, empowered to make the exchange; Hise had, under date of June 21, 1849, proposed to the Guatemalan Government "that it would be convenient, to Commission Sr Antonio Aycenena, now residing in New York, as agent or Comm^{r} of this Republic, through whom to effect an exchange of the Ratifications of the treaty Between the United States and Guatemala, at the city of Washington;—I would, with pleasure bear such commission to him from your Excy^{a} government" (D.S., 1 Despatches, Guatemala, September 15, 1849, enclosure); but it does not appear that any such commission or full power was given until that of February 26, 1852, quoted above.

Just when the signed original treaty and the original Guatemalan instrument of ratification were respectively received at the Department of State is not of record. It seems not unreasonable to believe that that ratification, and not the signed original treaty, was the document submitted to the Senate with the presidential message of March 19, 1850; for, as already mentioned, that document is now embodied in the duplicate United States instrument of ratification and the original proclamation, and, moreover, the text of this treaty as printed in 10 Statutes at Large, 873–89, contains the distinguishing characteristics of that document as compared with the signed original treaty, including even the opening recitals (in Spanish) of the Guatemalan ratification; that print is obviously from the Guatemalan instrument of ratification.

The Exchange of Ratifications

The ratifications of this treaty were not exchanged until more than three years after its signature. The time limited for the exchange, even as extended by the Senate resolution of September 27, 1850, expired on March 31, 1851; the place of exchange (next to the final paragraph of the treaty) was to be either "the City of Washington or Guatemala".

Instructions under date of June 6, 1851, were given to John Bozman Kerr, who had been appointed Chargé d'Affaires to Nicaragua on the previous March 12, which related to the exchange of ratifications both of this treaty and of that with El Salvador of January 2, 1850 (Document 139), and which included the following (D.S., 15 Instructions, American States, 116–18):

A box which you have received from the Department, contains the President's ratifications of two treaties, one with the Republic of Guatemala, signed on the

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3d. of March, 1849, and the other with the Republic of San Salvador, signed on the 2nd. of January, 1850. The periods limited for the exchange of the ratifications of these treaties, expired before they had been approved by the Senate of the United States, but that Body, by two several resolutions of the 27th. of September, authorized that ceremony to be performed at any time prior to the 1st of April, last. As it was judged advisable to forward the ratifications by the Chargé d'Affaires of the United States, the time limited by the Senate has now expired, it having been impracticable for you to reach that country for the purpose of making the exchange within that time. The punctual observance of the formality, however, is not in this instance material, and there can be no doubt that the Senate would approve of the exchange if it were yet to be made. Consequently you may make a proposition for that purpose to the governments of San Salvador and Guatemala. This, however, must embrace a condition, that the treaties shall not be published or be considered as obligatory by either government, until the Senate of the United States shall have duly approved of the exchange. This condition may be expressed in the certificate of exchange, a draft of which you will herewith receive. The certificate must be executed in duplicate, one copy to be placed with their ratifications and the other with ours. You may send the ratifications to Washington whenever this can be done without expense to the government. You will, however, at once notify the Department when the exchanges shall have been effected, in order that application may be made to the Senate for its sanction of the proceeding, and that the treaties may be published, if that application should be successful. You will herewith receive the necessary powers to effect the exchanges.

Kerr did not reach Guatemala until April 27, 1852; and the ratifications were duly exchanged, "subject to the final action of the Senate of the United States", on the following May 13 (D.S., 1 Despatches, Nicaragua, No. 8, May 16, 1852). There can be no doubt that the instrument then delivered on the part of Guatemala was the copy of the original Guatemalan instrument of ratification (of March 20, 1849) authenticated May 8, 1852, and above described. The English version of the certificate of the exchange of ratifications is in the following form:

We, the undersigned, John Bozman Kerr, Chargé d'Affaires of the United States to the Republic of Nicaragua, specially empowered for this act, by the President of the United States, and the Licentiate José Mariano Rodriguez, Secretary of State, and of the Department of Foreign Relations, having met for the purpose of exchanging the ratifications of the General Convention of Peace, Amity, Navigation and Commerce, between the said States and the Republic of Guatemala, signed in the city of Guatemala, on the third day of March, in the year of our Lord, one thousand eight hundred and forty nine, certify:

That, after having compared the said ratifications, each with the other, and both with the original of said convention, the said exchange was effected by us.

We further certify, that this proceeding took place with the understanding that the said convention is not to be binding upon either of the parties thereto, or to be published by either, until the Senate of the United States shall have duly sanctioned the exchange of ratifications referred to, inasmuch as the time originally assigned for the said exchange and its further extension by that body, have now elapsed.

In witness whereof, we have signed this instrument in duplicate and have thereunto affixed our respective seals at the City of Guatemala this thirteenth day of May, in the year of our Lord, one thousand eight hundred and fifty two.

[Seal] JOHN BOZMAN KERR [Seal] J. MARQ RODRIGUEZ

Also to be noted here is the express waiver of the limitation of time for the exchange which is written in the full power to the Guatemalan Chargé d'Affaires at Washington dated February 26, 1852, and quoted above.

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On May 5, 1852, President Fillmore informed the Senate of the circumstances in the following message, which envisaged the possibility of the exchange of ratifications being had at Washington (Executive Journal, VIII, 385):

On the 3d of March, 1849, a general convention of peace, amity, commerce, and navigation between the United States and the Republic of Guatemala, [was signed] by Elijah Hise, the chargé d'affaires of the United States to that Republic, on the part of this Government, and by Señor Don Jose Mariano Rodriguez, minister for foreign affairs, on the part of the Government of Guatemala. This convention was approved by the Senate on the 24th of September, 1850, and, by a resolution of the 27th of that month, that body authorized the ratification of this Government to be exchanged for the ratification of the Government of Guatemala at any time prior to the 1st of April, 1851. I accordingly ratified the convention on the 14th of November, 1850, but there was then no person in this country authorized to effect the exchange of ratifications on the part of the Guatemalan Government, and the United States had no diplomatic representative there. When, however, in the summer of 1851, Mr. J. Bozman Kerr proceeded to Nicaragua as the chargé d'affaires of the United States, he was empowered and instructed, when he should have concluded the business which it was presumed would not have detained him long in Nicaragua, to repair to Guatemala and effect the exchange on the part of this Government. Circumstances, however, have hitherto prevented him from accomplishing this object. Meanwhile Señor Don Felipe Molina has been received as chargé d'affaires of Guatemala here, and has been empowered to effect the exchange on the part of that Government.

I accordingly recommend that the Senate authorize a further extension of the period for exchanging the ratifications, in order that the convention may go into operation. It is presumed that if this recommendation should be adopted, a few weeks from the date of the decision of the Senate upon the subject would be necessary to complete the preparations for carrying it into effect.

The Senate resolution for a further extension of the time for the exchange was adopted on June 7, 1852, after the ceremony had taken place at Guatemala, but of course before the fact was known at Washington; it was in the following form (*ibid.*, 394–95):

Whereas the time limited by the thirty-third article of the general convention of peace, amity, commerce, and navigation between the United States of America and the Republic of Guatemala, concluded at the city of Guatemala, the 3d day of March, in the year of our Lord 1849, for the exchange of ratifications of the same, has expired before such ratifications could be effected: Be it therefore,

Resolved (*two-thirds of the Senators present concurring*), That the Senate advise and consent to the exchange of ratifications of the general convention aforesaid, at any time prior to the first day of November next, whenever the same can be effected, between the authorities of the United States and the duly constituted authority of the Government of the Republic of Guatemala, and the said ratifications shall be deemed and taken to have been regularly exchanged, the limitation contained in said convention to the contrary notwithstanding.

The papers were transmitted from León, Nicaragua, about the middle of June by the hands of a traveler who served as special messenger for the purpose (D.S., 1 Despatches, Nicaragua, No. 9, June 14, 1852); and the proclamation was issued (July 28, 1852) on their receipt by the Department of State.

The Negotiations

Elijah Hise was appointed Chargé d'Affaires of the United States to the Republic of Guatemala on March 31, 1848, and on the following

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June 3 he was furnished with instructions (D.S., 15 Instructions, American States, 51–61); therein is mentioned the Guatemalan decree of independence of March 21, 1847, a printed copy of which is available (D.S., 1 Despatches, Guatemala, No. 18, March 27, 1847, enclosure); but it appears that formal recognition by the United States of Guatemala as a separate state had taken place on April 5, 1844, by the issuance of an exequatur to Antonio de Aycinena as Guatemalan consul general, whose commission of December 9, 1843, is from Mariano Rivera, President "of the free, sovereign, and independent State of Guatemala" (D.S., 3 Exequaturs, 245; 2 Commissions, etc., 75–76); the instructions to Hise of June 3, 1848, included the following:

> The great extension which the coast of the United States on the Pacific has recently attained, followed, as it will be, by a rapid increase of our population in that quarter, admonishes this government to cultivate and strengthen, in a spirit of wise forecast, relations of friendship and commerce with the other governments whose territories border upon that ocean.
>
> . . . . . .
>
> The Federation of Central America had not long been formed, when its government accredited to that of the United States a Minister Plenipotentiary, with whom a Treaty was concluded in this City on the 5th December, 1825 [Document 50]. This Treaty was upon a basis more liberal than any which had previously been concluded by the United States. Although from the comparative insignificance of the commercial marine of that Republic there might have been cause to apprehend that some of the provisions of the Treaty, though reciprocal in terms, would prove unequal in their operation, it is believed that no complaints of this character were made and that, in fact, there was no cause for them. Under the authority of the Treaty, consumers in Central America of articles from Europe or the East Indies, derived advantages from the competition of the intelligence and enterprise of merchants of the United States in supplying them, far outweighing any benefits which that country could possibly have enjoyed from interposing impediments to the admission of our vessels and their cargoes. This, indeed, seems to have been the conviction of the Central American Government itself, so long as it existed. You will notice that the Treaty was to last twelve years from the date of the exchange of the ratifications and that it did not contain the clause which has since been introduced into many of our Treaties, providing for its continuance. In consequence of this, in 1838, shortly previous to the expiration of the Treaty, Mr De Witt, the Chargé d'Affaires of the United States at Guatemala, was empowered and instructed to renew it. The new Treaty was accordingly signed on the 14th of July, 1838. It contained a stipulation that the ratifications were to be exchanged in this City within eight months from its date. Mr De Witt, having received leave of absence from his post, quitted that country before the Treaty had been acted upon by the Government of Central America, and when he reached the United States, bringing the Treaty with him, the period limited for the exchange of the ratifications had expired. In consequence of this, the Treaty did not go into operation. Mr De Witt died soon after his return home, and no successor to him as Chargé d'Affaires of the United States to Central America was appointed. In the summer of 1839, however, Mr J. L. Stephens was sent as a special agent of this government to that country, for the purpose, in part, of proposing to the Central American Government that the ratifications of the Treaty should be exchanged notwithstanding the lapse of the time within which that ceremony was to have taken place. On reaching that country, however, he was unable to accomplish the object in consequence of the dissolution of the government of Central America.
>
> In the summer of 1841, Mr W. S. Murphy was also despatched as a Special Agent to Central America. It was stated in his instructions that since the return of Mr Stephens, there was reason to believe that a Confederation of some kind and to some extent had been formed in Central America; that in the opinion of

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the President it was desirable that this government should be in possession of authentic information in regard to the condition and prospects of that country. If he should find there any organised government with the title of the 'Federation of Central America', he was to endeavor to effect with it the arrangement in relation to the Treaty which Mr Stephens failed to accomplish. He ascertained that no government existed with the title above mentioned. He was informed, however, that there was a league or alliance among the Central American States, but he did not discover its nature or extent. The Department has reason to believe that since the mission of Mr Murphy, attempts have been made by some of those States to form a league for the purpose of transacting business with foreign powers, but it is doubtful whether any of these attempts have succeeded, and it is almost certain that at present there is no federal government in Central America entitled to the privileges or responsible for the duties of a sovereign power.

By a decree bearing date the 21st of March, 1847, the State of Guatemala declared itself a Free and Independent Republic.

The Department is informed that the government of Guatemala has recently expressed a disposition to form a Treaty with the United States. This disposition is reciprocated by the President. At as early a period, therefore, after you shall have been received by that government as you may judge proper, you may inform the Secretary of State of Guatemala that you are empowered to negotiate a treaty with his government and you will request that, if the Government of Guatemala is disposed to enter upon the negotiation, a person may also be empowered for the same purpose on its part. As it cannot be anticipated that the Guatemalian Government will object to the Treaty signed by Mr De Witt and Mr Alvarez on behalf of their respective Governments on the 14th July, 1838, you may propose the adoption of that Treaty between the United States and Guatemala. It is almost literally identical with the Treaty between the United States and the Federation of Central America of the 5th December, 1825. . . .

You are also herewith furnished with a Full Power to conclude a Treaty of Commerce with the Republic of San Salvador. Similar treaties with the other States of Central America would probably be useful in fostering our trade with them and in protecting our citizens who may visit or reside in their territories. It is not, however, deemed advisable to empower you to conclude a Treaty with either Nicaragua, Honduras or Costa Rica, until you shall have communicated to the Department more full and authentic statistical information in regard to those States than that which it now possesses. You will accordingly be diligent in collecting this information, which it would be desirable that the Department should receive without any delay which can be avoided.

On the same date, June 3, 1848, there was issued to Hise a full power, in the customary form (D.S., 3 Credences, 247), which authorized him "to meet and confer with any person or persons duly authorised by the Government of Guatemala, being furnished with like power and authority, and with him or them to agree, treat, consult and negotiate of and concerning general commerce between the United States and the Republic of Guatemala and claims of citizens of the United States upon the late Government of Central America and upon the Government of Guatemala, and to conclude and sign a treaty or treaties, convention or conventions touching the premises, transmitting the same to the President of the United States for his ratification by and with the advice and consent of the Senate thereof".

Owing to shipwreck and other troubles, Hise did not reach his post until late in November 1848; political conditions then existing in Guatemala caused some delay; but it appears that no difficulty arose regarding the United States proposal, which was for a renewal of the treaty with the Central American Federation of December

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5, 1825 (Document 50). Aside from its clauses of expiration and for exchange of ratifications, this treaty is almost literally identical with the earlier agreement.

Nothing definite appears as to the full power of the Plenipotentiary of Guatemala other than the formal statement in the second paragraph of the preamble of the treaty.

ARTICLE 33

By the first point of Article 33 it was provided that this treaty should continue in force for twelve years from the date of the exchange of ratifications and thereafter until the expiration of one year after notice of termination had been given by one party to the other; thereupon, "this treaty in all its parts relative to commerce and navigation, shall altogether cease and determine, and in all those parts which relate to peace and friendship, it shall be perpetually binding on both powers"; similar clauses appear in various treaties between the United States and other American states.

In response to notice given by the Government of Guatemala, Secretary of State Fish wrote on November 15, 1873, that the treaty with Guatemala of March 3, 1849, "would terminate" on November 4, 1874 (D.S., 2 Notes to the Guatemalan Legation, 19–20); in notes written at Guatemala on June 6 and June 9, 1888, the two Governments were in accord that the "treaty provisions relating to peace and friendship were not terminable and have not been terminated by the notice given by Guatemala in 1873" (see Moore, Digest, V, 326–27; Foreign Relations, 1888, pt. 1, 149–51, 155–56, 158–59).

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ECUADOR : JUNE 15, 1849

Convention for the Final Settlement of the Cases of the Brig "Josephine" and the Schooner "Ranger", signed at Quito June 15, 1849. Original in English and Spanish.
Not subject to ratification by the United States. Ratified by Ecuador June 20, 1849. Not proclaimed.

The Undersigned Chargè d'Affaires of the United States and Marcos Espinel Plenipotentiary of Ecuador being duly authorized to enter into a convention for the payment of the debt which pertains to Ecuador in the indemnification claimed by the owners of the Brig Josephine and of the Schooner Ranger, after exchanging their full powers, have agreed to the following articles.

El infraescrito Márcos Espinel, Plenipotenciario por parte del Ecuador, í el Encargado de Negocios de los Estados Unidos, hallandose debidamente autorizados para entrar en una convencion sobre el pago de la deuda que pertenece al Ecuador por la indemnizacion reclamada por los propietarios del Bergantin "Josefina" i de la Goleta "Ranger," despues de cambear sus Plenos Poderes, han convenido en los articulos siguientes—

ARTICLE 1st The Government of Ecuador obligates itself to pay to the order of the Chargè d'Affaires of the United States, or to the order of any person or persons duly empowered by the Government of the United States, the sum of five thousand nine hundred and fifty five dollars $\frac{20}{100}$ Spanish, on account of all losses and damages which the owners of the Brig Josephine have claimed through the Legation of the

ARTICULO 1º El Gobierno del Ecuador se obliga á pagar a la órden í disposicion del Encargado de Negocios de los Estados Unidos, o á la orden de cualquiera persona o personas debidamente autorizadas por el Gobierno de los Estado Unidos la suma de cinco mil novecientos cincuenta i cinco pesos $\frac{20}{100}$ españoles por cuenta de todas las pérdidas i perjuicios que los propietarios del Bergantin "Josefina," han reclamado por

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United States, together with interest upon the said sum at the rate of six per cent. per annum, to be calculated from the fifth day of May one thousand eight hundred and thirty until paid.

ARTICLE 2d The Government of Ecuador also agrees to pay to the order of the Chargé d'Affaires of the United States, or to the order of any person or persons duly empowered by the Government of the United States, the sum of one thousand and ninety nine dollars $\frac{42}{100}$ Spanish, on account of the Schooner Ranger and part of her cargo which were confiscated in contravention of the treaty[1] between the United States and Columbia, together with interest upon the said sum at the rate of six per cent per annum, to be calculated from the second day of August one thousand eight hundred and twenty five until paid.

ARTICLE 3d It is agreed by the contracting parties that the above-named sums, to be paid respectively on account of the Brig Josephine and of the Schooner Ranger, shall be paid in the following manner, Viz. the sum of two thousand dollars on the first day of July next, the same amount on the first day of October next, and the remainder in three equal annual instalments, to be counted

medio de la Legacion de los Estados Unidos, juntamente con el interes de dicha suma á razon de seis por ciento annual que debe calcularse desde el cinco de mayo de mil ochocientos treinta hasta que se pague.

ARTICULO 2º El Gobierno del Ecuador conviene tambien en pagar a la órden del Encargado de Negocios de los Estados Unidos, ó á la órden de cualquiera persona ó personas debidamente autorizadas por el Gobierno de los Estados Unidos, la suma de mil noventa ì nueve pesos $\frac{42}{100}$ españoles por cuenta de la Goleta "Ranger" i parte de su carga que fueron confiscadas en contravencion al tratado[1] entre los Estados Unidos i Colombia, juntamente con el interes de dicha suma á razon de seis por ciento annual que debe calcularse desde el día dos de Agosto de Mil ochocientos veintícinco hta. su pago.

ARTÍCULO 3º Se conviene por las partes contratantes en que las espresadas sumas que deben pagarse con respecto á los casos del "Bergantin "Josefina" i de la Goleta "Ranger" se satisfarán del modo siguiente, á saber: la suma de dos mil pesos el primero de Julio prócsimo, la misma cantidad el primero de Octubre prócsimo, i el resto en tres iguales cantidades annuales, contando desde el veinte

[1] Treaty of October 3, 1824 (Document 47); see Article 16 of that treaty.

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from the twenty seventh day of April one thousand eight hundred and forty nine.

In faith whereof the respective plenipotentiaries have signed the above articles in the English and Spanish languages, and have thereto affixed their seals at the city of Quito, this fifteenth day of June, one thousand eight hundred and forty nine.

[Seal] VANBRUGH LIVINGSTON
[Seal] MÁRCOS ESPINEL

í siete de Abril de mil ochocientos cuarenta i nueve.

En fé de lo cual, los respectivos Plenipotenciarios han firmado los artículos anteriores en las lenguas inglesa i castellana, i les han puesto sus sellos en la Ciudad de Quito á quince de Junio de mil ochocientos cuarenta i nueve.

(L.S.)—MÁRCOS ESPINEL
(L.S.)—VANBRUGH LIVINGSTON.

NOTES

The English version of this convention which is printed above is from the original enclosed with the despatch of Vanbrugh Livingston, Chargé d'Affaires at Quito, of June 27, 1849 (D.S., 1 Despatches, Ecuador, No. 18). A copy of the Spanish version is also with that despatch; but the Spanish here printed is from the Ecuadoran instrument of ratification of June 20, 1849, the original of which is in the volume cited. That instrument does not include the English version. It reads in translation as follows:

Vicente Ramon Roca, President of the Republic of Ecuador,

etc., etc., etc.

Whereas our Plenipotentiary, Dr. Márcos Espinel, has concluded with Mr. Vanbrugh Livingston, Chargé d'Affaires of the United States, an agreement in the following terms:

[Here follows a copy of the Spanish version of the convention]

And whereas the above-inserted agreement is limited to the manner and form in which there must be paid a debt acknowledged by the Republic of Colombia and subsequently by the Republic of Ecuador, I have decided to approve it in all its parts.

The Government Palace at Quito, on the twentieth of June of one thousand eight hundred and forty-nine—the fifth of liberty.[1]

[Seal] VICENTE RAMON ROCA

MAN[1] GÓMEZ DE LA TORRE

THE FULL POWERS

The full power of Livingston was under date of May 2, 1848, and in customary form (D.S., 3 Credences, 243); it was sent to the Minister of Foreign Affairs of Ecuador on September 19, 1848 (D.S.,

[1] The reference appears to be to the termination on March 6, 1845, of the rule of Juan José Flores as President of Ecuador.

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1 Despatches, Ecuador, No. 6, November 3, 1848, enclosure A). A copy of the full power of the Plenipotentiary of Ecuador is with the despatch of Livingston of June 27, 1849 (*ibid.*, No. 18, enclosure G); the certified copy of that full power which Livingston received with a note of the Plenipotentiary of Ecuador of June 8, 1849, reads in translation as follows (D.S., Legation Archives, Ecuador, Instructions, Despatches, Notes to and from the Foreign Office, and Miscellaneous, 1849–52):

Vicente Ramon Roca, President of the Republic of Ecuador

To all to whom these presents may come, Greeting:

Judging it advisable to enter into an agreement (*estipulación*) having for its purpose the settlement, the liquidation, and the manner and terms under which the Government of Ecuador should meet the obligations which at the time of the dissolution of Colombia were left unpaid to the citizens of the United States in the cases of the brig *Josephine* and the schooner *Ranger*, we have decided to confer, as we by these presents do confer, full and special power on Mr. Márcos Espinel, Chief Clerk of the Ministry of the Interior and Foreign Relations, whose patriotism, learning, and judgment inspire in us absolute confidence: by virtue thereof he shall proceed to negotiate and sign the aforesaid agreement (*convenio*) with the Chargé d'Affaires of the United States of North America, who may to this effect be invested with full powers, issued in due form; it being understood that the settlement or convention concluded by our Plenipotentiary shall not be valid nor have any effect until, conformably with the Constitution of the Republic, it be ratified by the Executive Power.

In faith whereof these presents are issued, signed by my hand, sealed with the great seal of the Republic, and countersigned by the Minister Secretary of State in the Office of Foreign Relations at Quito on the eighth of January, one thousand eight hundred and forty-nine.

[Seal]

VICENTE RAMON ROCA

MANUEL GÓMEZ DE LA TORRE

Márcos Espinel, Chief Clerk of the Ministry of Foreign Relations and Plenipotentiary of Ecuador.

THE SETTLEMENT

This convention provided for the payment of the entire proportionate liability of Ecuador, principal and interest, in the cases of the *Josephine* and the *Ranger*. Those claims had first been presented to the Government of Ecuador by James C. Pickett (D.S., 5 Despatches, Peru, No. 8, July 3, 1839, and enclosure 11) at the time of the negotiation of the treaty of June 13, 1839 (Document 90).

The case of the *Josephine* had been dealt with in four earlier conventions, those with Colombia of March 16, 1825, and November 25, 1829 (Documents 48 and 67), that with New Granada of May 16, 1846 (Document 119), and that with Venezuela of November 16, 1846 (Document 124); the notes to those conventions contain details as to the origin of the claim and its history.

The proportionate liability of Ecuador in the case of the *Josephine* was 21½ percent of the sum stated in the convention with Colombia of November 25, 1829 (Document 67), namely, $20,250, plus somewhat more than six years' interest; the resulting amount, according to the calculation here made, was $5,955.20 Spanish, which was agreed by this convention to be paid by Ecuador with interest at 6 percent from

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May 5, 1830, the approximate date fixed for payment by the convention of November 25, 1829.

By Article 2 of the convention with Colombia of November 25, 1829 (Document 67), the liability in the case of the *Ranger* had been fixed at $5,113.59 principal; the proportionate share of the liability which devolved on Ecuador as one of the three successor states was 21½ percent, or $1,099.42 Spanish, the amount agreed by Article 2 of this convention to be paid, plus interest from August 2, 1825 (see generally the notes to Document 67).

The payments stipulated in this convention were made; the last instalment was paid and the claims finally liquidated on July 15, 1853, with interest to date (D.S., 2 Despatches, Ecuador, No. 38, July 30, 1853, and enclosure A).

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VENEZUELA : JULY 7, 1849

Convention for the Settlement of the Claim Arising Out of the Seizure and Detention of the Brig "Mount Vernon", signed at Caracas July 7, 1849. Original in Spanish and English.
Not subject to ratification. Not proclaimed.

Convencion sobre el reclamo relativo al Bergantin Americano Mount Vernon.

Los infraescritos Jacinto Gutierrez, Secretario de Estado en el Despacho de Relaciones Exteriores de Venezuela, y Benjamin G. Shields, Encargado de Negocios de los Estados Unidos de América, debidamente autorizados al efecto de celebrar un arreglo equitativo sobre la indemnizacion que reclaman los interesados en el Bergantin Americano Mount Vernon, apresado ilegalmente el dia 30 de Diciembre de 1848 en el puerto de la Ceiba, Lago de Maracaibo, por la Goleta de Guerra Venezolana "La Yntrépida," enviado contropas del Gobierno á Coro y luego á Puerto Cabello, y detenido en este último puerto hasta el 25 de Mayo últº; de cuyo apresamiento y larga detencion se han originado el deterioro considerable del buque, pérdida del cargamento y perjuicios al dueño y cargados, han

Convention upon the claim relative to the American Brig Mount Vernon

The undersigned, Benjamin G. Shields, Chargé d'affaires of the United States of America, and Jacinto Gutierrez, Secretary of State in the Department of Foreign Relations of Venezuela, duly authorized to celebrate an equitable agreement relative to the indemnification claimed by the parties interested in the American Brig Mount Vernon, illegally seized on the 30th day of December 1848, in the port of La Ceiba, Lake of Maracaibo, by the Venezuelan Schooner of War "La Yntrépida, sent with troops of the Government to Coro and thence to Pto. Cabello, and in the latter port detained until the 25th of May last; in consequence of which seizure and long detention have resulted considerable damage to the vessel, loss of cargo and prejudice to the owner and freighter; have agreed to conclude and seal

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convenido en concluir y sellar todos los particulares de este negocio en los términos siguientes.

ART. 1º El Gobierno de Venezuela se obliga en indemnizacion á pagar á la orden del Señor Encargado de Negocios de los Estados Unidos de América la suma de once mil quinientos pesos en los plazos siguientes: dos mil pesos el dia quince del presente mes de Julio: tres mil pesos el dia quince de Octubre próximo venidero, y el resto de seis mil quinientos pesos el quince de Abril de 1850.

ART. 2º Hallandose sumamente averiado el resto del cargamento que tiene á su bordo el Bergantin Mount Vernon, segun el reconocimiento que se ha hecho de él, su dueño podrá venderlo libremente en Pto. Cabello ó La Guaira, sin pagar ningun derecho de importacion ó puerto estando ya satisfechos los de puerto en Maracaibo desde Noviembre del año pasado.

ART. 3º Con lo estipulado en los precedentes artículos y su cumplimiento, quedarán completa y absolutamente indemnizados todos los daños y perjuicios, pérdidas, menoscabos é intereses que han reclamado ó pretendan reclamar en lo sucesivo los propietarios y personas interesadas en el Bergantin Mount Vernon y su cargamento.

at all points, this affair, in the following terms.

ART. 1. The Government of Venezuela obligates itself to pay, in the way of indemnification, to the order of the Chargé d'affaires of the United States of América the sum of eleven thousand five hundred dollars, in the following instalments: two thousand dollars on the fifteenth day of the present month (July): three thousand dollars on the fifteenth day of October next; and the residue of six thousand five hundred dollars, on the fifteenth of April 1850.

ART. 2. The remainder of the cargo which the Brig Mount Vernon has on board, being greatly damaged, as appears by the survey which was made of it, its owner may sell the same in Pto Cabello ó La Guaira, free of any duties of importation or of port, those of port having already been paid in Maracaibo, in November of the passed year.

ART. 3. By the stipulations in the preceding articles and their fulfilment, all damages, prejudices, losses, deteriorations and interests, which the owners and persons interested in the Brig Mount Vernon and her cargo, have claimed or may pretend to claim, shall remain completely and absolutely indemnified

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En fé de lo cual los infraescritos han firmado dos convenios de un tenor en Caracas á siete de Julio de mil ochocientos cuarenta y nueve

JACINTO GUTIERREZ

B. G. SHIELDS

Chargé d'Affaires of the United States

In witness whereof the undersigned have signed two conventions of the same tenor in Caracas on the seventh day of July eighteen hundred and forty nine

B. G. SHIELDS

Chargé d'Affaires of the United States.

JACINTO GUTIERREZ.

NOTES

The source of the text of this convention printed above is the copy of the convention, in Spanish and English, which is with the despatch of Benjamin G. Shields, Chargé d'Affaires to Venezuela, dated July 14, 1849 (D.S., 7 Despatches, Venezuela, No. 90). In that copy the text is written in parallel columns, the Spanish at the left. It appears from the despatch mentioned that, while the convention is dated July 7, 1849, it was not in fact signed until July 14 and, further, that the omission of any provision for the approval of the convention by the Congress of Venezuela was deliberate. The substance of the despatch cited follows:

> Enclosed I have the honor to transmit a copy of the convention concluded with the Minister of Foreign Affairs, for the settlement of the indemnity claimed in behalf of Henry Penny, the owner of the American Brig Mount Vernon. Although bearing date the seventh, it was not signed until today. . . .
>
> I should not have consented to reduce the amount of the indemnity to the sum stipulated in the convention ($11.500), but for the urgent request of the claimant, who has been in attendance all the while, to settle the matter upon any terms whatever. When told that whatever sums the Government might pay and agree to pay, nothing could be delivered to him here without special instructions from the Department, he replied that his claim being once liquidated and recognized by a convention, he could be able to realize by his own individual arrangements, a sufficient amount to relieve the embarassments of his situation. Although requested thus to act by the party interested, I felt considerable embarassment in consenting to stipulate for an indemnity, less than I conceived to be just and called for by the circumstances of the case. The consideration that one of the questions of practical difficulty with this Government would be removed by the convention—that the contingency of the consent of Congress was not interposed to retard the fulfilment of its stipulations, as in the case of other conventions heretofore—added to the wishes of the claimant, determined me to accede to the terms finally proposed by the Minister.
>
> I was of opinion also, that a postponement of the settlement of the claim to a future period, might subject the interests of the claimant to prejudice, from the use which might be made of documents and declarations, sent up from Maracaibo to diminish the merits of the claim, amongst which was a letter (pronounced to be a forgery by the claimant) purporting to have been addressed by him to the Governor, approving of all that he (the Governor) had done, in reference to the extraction of the Cargo shipped on board the vessel for New Orleans and delivered to its owners in Maracaibo, and praying for the delivery of the vessel to the claimant upon the same terms, apparently from a motive of fear that she might be tried and condemned for an alleged violation of the revenue laws. Some of the declarations, as stated by the Minister, imputed to the Captain of the vessel a

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hostile agency towards the Government, in bearing dispatches and selling provisions to the enemy, all of which he denied most positively and earnestly. Although the Minister relied but little upon the efficacy of such documents whilst the claimant was present to dispute them, it was nevertheless to be apprehended that at a future period and under other circumstances, a more efficient use might be made of them in prejudice of the claim.

While neither in the convention nor in the despatches is there any mention of full powers, Shields had been give a full power under date of March 24, 1845, authorizing him to "agree, treat, consult and negotiate of and concerning claims of citizens of the United States against the late Republic of Colombia and the said Republic of Venezuela" (D.S., 3 Credences, 122).

The Claim and the Settlement

The circumstances out of which the claim settled by this convention arose are thus stated in a note of Shields to Commander Charles Lowndes of the U.S. sloop of war *Germantown*, then at La Guaira, dated May 16, 1849 (D.S., 7 Despatches, Venezuela, No. 87, June 20, 1849, enclosure):

The vessel was seized on the 31st of December [1848] by orders of the commander of the Government squadron, whilst taking in cargo by the written permission of the Customhouse authorities at the South end of the Lake of Maracaibo—the portion of the cargo put on board (about a half freight destined for New Orleans) was taken out, and the vessel, with the remainder of that which had been introduced in her, and which had not yet been discharged in consequence of the hostile operations then going on between the belligerent parties, was put in possession of a prize crew, and made use of as a transport for the conveyance of Government troops from Maracaibo & Coro to Pto. Cabello, where she arrived on the 12th of February [1849] and was detained under Government custody until within a few days past. I learn from a report of an examination made at the instigation of the U.S. Consul at Pto. Cabello, that, during this custody, she suffered very heavy damage both in her hull and rigging, and is not consequently seaworthy.

The detention of the *Mount Vernon* is stated to have continued until May 25, 1849 (preamble of the convention); the convention was signed less than two months thereafter and little more than six months from the date of the seizure (December 30 or 31, 1848).

The amount of the indemnification fixed by this convention was duly paid, the last instalment having been received from the Venezuelan Government on July 12, 1850, with interest at 5 percent from April 15, 1850, the date when it became due (D.S., 8 Despatches, Venezuela, No. 9, July 20, 1850).

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Treaty Series No. 160
9 Statutes at Large, 977-83
18 *ibid.*, pt. 2, Public Treaties, 406-11

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HAWAII : DECEMBER 20, 1849

Treaty of Friendship, Commerce, and Navigation, signed at Washington December 20, 1849. Original in English.
Submitted to the Senate December 21, 1849. Resolution of advice and consent January 14, 1850. Ratified by the United States February 4, 1850. Ratified by Hawaii August 19, 1850. Ratifications exchanged at Honolulu August 24, 1850. Proclaimed November 9, 1850.

The United States of America and His Majesty the King of the Hawaiian Islands, equally animated with the desire of maintaining the relations of good understanding which have hitherto so happily subsisted between their respective states, and consolidating the commercial intercourse between them, have agreed to enter into negotiations for the conclusion of a Treaty of Friendship, Commerce and Navigation, for which purpose they have appointed plenipotentiaries, that is to say:

The President of the United States of America, John M. Clayton, Secretary of State of the United States; and His Majesty the King of the Hawaiian Islands, James Jackson Jarves, accredited as his Special Commissioner to the Government of the United States; who, after having exchanged their full powers, found in good and due form, have concluded and signed the following articles:

Article I.

There shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and his successors.

Article II.

There shall be reciprocal liberty of commerce and navigation between the United States of America and the Hawaiian Islands.

No duty of customs, or other impost, shall be charged upon any goods, the produce or manufacture of one country, upon importation from such country into the other, other or higher than the duty or impost charged upon goods of the same kind, the produce or manufac-

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ture of, or imported from, any other country; and the United States of America and His Majesty the King of the Hawaiian Islands do hereby engage, that the subjects or citizens of any other state shall not enjoy any favor, privilege, or immunity, whatever, in matters of commerce and navigation, which shall not also, at the same time, be extended to the subjects or citizens of the other contracting party, gratuitously, if the concession in favor of that other State shall have been gratuitous, and in return for a compensation, as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concession shall have been conditional.

ARTICLE III.

All articles the produce or manufacture of either country which can legally be imported into either country from the other, in ships of that other country, and thence coming, shall, when so imported, be subject to the same duties, and enjoy the same privileges, whether imported in ships of the one country, or in ships of the other; and in like manner, all goods which can legally be exported or reexported from either country to the other, in ships of that other country, shall, when so exported or re-exported, be subject to the same duties, and be entitled to the same privileges, drawbacks, bounties, and allowances, whether exported in ships of the one country, or in ships of the other: and all goods and articles, of whatever description, not being of the produce or manufacture of the United States, which can be legally imported into the Sandwich Islands, shall when so imported in vessels of the United States pay no other or higher duties, imposts, or charges than shall be payable upon the like goods, and articles, when imported in the vessels of the most favored foreign nation other than the nation of which the said goods and articles are the produce or manufacture.

ARTICLE IV.

No duties of tonnage, harbor, light-houses, pilotage, quarantine, or other similar duties, of whatever nature, or under whatever denomination, shall be imposed in either country upon the vessels of the other, in respect of voyages between the United States of America and the Hawaiian Islands, if laden, or in respect of any voyage, if in ballast, which shall not be equally imposed in the like cases on national vessels.

ARTICLE V.

It is hereby declared, that the stipulations of the present treaty are not to be understood as applying to the navigation and carrying trade between one port and another situated in the states of either contract-

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ing party, such navigation and trade being reserved exclusively to national vessels.

ARTICLE VI.

Steam vessels of the United States which may be employed by the Government of the said States, in the carrying of their Public Mails across the Pacific Ocean, or from one port in that ocean to another, shall have free access to the ports of the Sandwich Islands, with the privilege of stopping therein to refit, to refresh, to land passengers and their baggage, and for the transaction of any business pertaining to the public Mail service of the United States, and shall be subject in such ports to no duties of tonnage, harbor, lighthouses, quarantine, or other similar duties of whatever nature or under whatever denomination.

ARTICLE VII.

The Whaleships of the United States shall have access to the ports of Hilo, Kealakekua and Hanalei in the Sandwich Islands, for the purposes of refitment and refreshment, as well as to the ports of Honolulu and Lahaina which only are ports of entry for all Merchant vessels, and in all the above named ports, they shall be permitted to trade or barter their supplies or goods, excepting spiritous liquors, to the amount of two hundred dollars *ad valorem* for each vessel, without paying any charge for tonnage or harbor dues of any description, or any duties or imposts whatever upon the goods or articles so traded or bartered. They shall also be permitted, with the like exemption from all charges for tonnage and harbor dues, further to trade or barter, with the same exception as to spiritous liquors, to the additional amount of one thousand dollars *ad valorem*, for each vessel, paying upon the additional goods, and articles so traded and bartered, no other or higher duties, than are payable on like goods, and articles, when imported in the vessels and by the citizens or subjects of the most favored foreign nation. They shall also be permitted to pass from port to port of the Sandwich Islands for the purpose of procuring refreshments, but they shall not discharge their seamen or land their passengers in the said Islands, except at Lahaina and Honolulu; and, in all the ports named in this article, the whaleships of the United States shall enjoy in all respects, whatsoever, all the rights, privileges and immunities, which are enjoyed by, or shall be granted to, the whaleships of the most favored foreign nation. The like privilege of frequenting the three ports of the Sandwich Islands, above named in this article, not being ports of entry for merchant vessels, is also guaranteed to all the public armed vessels of the United States. But nothing in this article shall

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be construed as authorising any vessel of the United States, having on board any disease usually regarded as requiring quarantine, to enter, during the continuance of such disease on board, any port of the Sandwich Islands, other than Lahaina or Honolulu.

ARTICLE VIII.

The contracting parties engage, in regard to the personal privileges that the citizens of the United States of America shall enjoy in the dominions of His Majesty the King of the Hawaiian Islands, and the subjects of his said Majesty in the United States of America, that they shall have free and undoubted right to travel and to reside in the states of the two high contracting parties, subject to the same precautions of police which are practiced towards the subjects or citizens of the most favored nations. They shall be entitled to occupy dwellings and warehouses, and to dispose of their personal property of every kind and description, by sale, gift, exchange, will, or in any other way whatever, without the smallest hinderance or obstacle; and their heirs or representatives, being subjects or citizens of the other contracting party, shall succeed to their personal goods, whether by testament or ab intestato; and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at will, paying to the profit of the respective governments such dues only as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases. And in case of the absence of the heir and representative, such care shall be taken of the said goods as would be taken of the goods of a native of the same country in like case, until the lawful owner may take measures for receiving them. And if a question should arise among several claimants as to which of them said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. Where on the decease of any person holding real estate within the territories of one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all duties of detraction on the part of the government of the respective States. The citizens or subjects of the contracting parties shall not be obliged to pay, under any pretence whatever, any taxes or impositions, other or greater than those which are paid, or may hereafter be paid, by the subjects or citizens of the most favored nations, in the respective states of the high contracting parties. They shall be exempt from all mili-

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tary service, whether by land or by sea; from forced loans, and from every extraordinary contribution not general and by law established. Their dwellings, warehouses, and all premises appertaining thereto, destined for the purposes of commerce or residence, shall be respected. No arbitrary search of, or visit to, their houses, and no arbitrary examination or inspection whatever of the books, papers, or accounts of their trade, shall be made; but such measures shall be executed only in conformity with the legal sentence of a competent tribunal; and each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively

ARTICLE IX.

The citizens and subjects of each of the two contracting parties shall be free in the states of the other to manage their own affairs themselves, or to commit those affairs to the management of any persons whom they may appoint as their broker, factor or agent; nor shall the citizens and subjects of the two contracting parties be restrained in their choice of persons to act in such capacities, nor shall they be called upon to pay any salary or remuneration to any person whom they shall not choose to employ.

Absolute freedom shall be given in all cases to the buyer and seller to bargain together and to fix the price of any goods or merchandize imported into, or to be exported from the states and dominions of the two contracting parties; save and except generally such cases wherein the laws and usages of the country may require the intervention of any special agents in the states and dominions of the contracting parties. But nothing contained in this or any other article of the present Treaty shall be construed to authorize the sale of spiritous liquors to the natives of the Sandwich Islands farther than such sale may be allowed by the Hawaiian laws.

ARTICLE X.

Each of the two contracting parties may have, in the ports of the other, consuls, vice consuls, and commercial agents, of their own appointment, who shall enjoy the same privileges and powers with those of the most favored nations; but if any such consuls shall exercise commerce, they shall be subject to the same laws and usages to which the private individuals of their nation are subject in the same place. The said Consuls, vice consuls, and commercial agents are authorized

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to require the assistance of the local authorities for the search, arrest, detention, and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose, they shall apply to the compent tribunals, judges and officers, and shall in writing demand the said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews; and this reclamation being thus substantiated, the surrender shall not be refused. Such deserters, when arrested shall be placed at the disposal of the said consuls, vice consuls, or commercial agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessel to which they belonged, or sent back to their own country by a vessel of the same nation or any other vessel whatsoever. The agents, owners or masters of vessels on account of whom the deserters have been apprehended, upon requisition of the local authorities shall be required to take or send away such deserters from the states and dominions of the contracting parties, or give such security for their good conduct as the law may require. But if not sent back nor reclaimed within six months from the day of their arrest, or if all the expenses of such imprisonment are not defrayed by the party causing such arrest and imprisonment, they shall be set at liberty and shall not be again arrested for the same cause. However, if the deserters should be found to have committed any crime or offence, their surrender may be delayed until the tribunal before which their case shall be depending, shall have pronounced its sentence, and such sentence shall have been carried into effect.

ARTICLE XI.

It is agreed that perfect and entire liberty of conscience shall be enjoyed by the citizens and subjects of both the contracting parties, in the countries of the one and the other, without their being liable to be disturbed or molested on account of their religious belief. But nothing contained in this article shall be construed to interfere with the exclusive right of the Hawaiian Government to regulate for itself the Schools which it may establish or support within its jurisdiction.

ARTICLE XII.

If any ships of war or other vessels, be wrecked on the coasts of the states or territories of either of the contracting parties, such ships or vessels, or any parts thereof, and all furniture and appurtenances belonging thereunto, and all goods and merchandize which shall be saved therefrom, or the produce thereof if sold shall be faithfully re-

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stored with the least possible delay to the proprietors, upon being claimed by them, or by their duly authorized factors; and if there are no such proprietors or factors on the spot, then the said goods and merchandize, or the proceeds thereof, as well as all the papers found on board such wrecked ships or vessels, shall be delivered to the American or Hawaiian Consul, or vice consul in whose district the wreck may have taken place; and such Consul vice consul, proprietors or factors, shall pay only the expenses incurred in the preservation of the property, together with the rate of salvage and expenses of quarantine which would have been payable in the like case of a wreck of a national vessel; and the goods and merchandize saved from the wreck shall not be subject to duties unless entered for consumption; it being understood that in case of any legal claim upon such wreck, goods or merchandize, the same shall be referred for decision to the competent tribunals of the country.

ARTICLE XIII.

The vessels of either of the two contracting parties which may be forced by stress of weather or other cause into one of the ports of the other, shall be exempt from all duties of port or navigation paid for the benefit of the state, if the motives which led to their seeking refuge be real and evident, and if no cargo be discharged or taken on board, save such as may relate to the subsistence of the crew, or be necessary for the repair of the vessels, and if they do not stay in port beyond the time necessary, keeping in view the cause which led to their seeking refuge.

ARTICLE XIV.

The contracting parties mutually agree to surrender, upon official requisition, to the authorities of each, all persons who, being charged with the crimes of murder, piracy, arson, robbery, forgery or the utterance of forged paper, committed within the jurisdiction of either, shall be found within the territories of the other; provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the person so charged shall be found, would justify his apprehension and commitment for trial if the crime had there been committed: and the respective judges and other magistrates of the two Governments, shall have authority, upon complaint made under oath, to issue a warrant for the apprehension of the person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining

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judge or magistrate to certify the same to the proper Executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE XV.

So soon as Steam or other mail Packets under the flag of either of the contracting parties, shall have commenced running between their respective ports of entry, the contracting parties agree to receive at the post offices of those ports all mailable matter, and to forward it as directed, the destination being to some regular post office of either country; charging thereupon the regular postal rates as established by law in the territories of either party receiving said mailable matter, in addition to the original postage of the office whence the mail was sent. Mails for the United States shall be made up at regular intervals at the Hawaiian Post Office, and despatched to ports of the United States, the postmasters at which ports shall open the same, and forward the enclosed matter as directed, crediting the Hawaiian Government with their postages as established by law and stamped upon each manuscript or printed sheet.

All mailable matter destined for the Hawaiian Islands shall be received at the several post offices in the United States and forwarded to San Francisco or other ports on the Pacific coast of the United States, whence the postmasters shall despatch it by the regular mail packets to Honolulu, the Hawaiian government agreeing on their part to receive and collect for and credit the Post Office Department of the United States with the United States rates charged thereupon. It shall be optional to prepay the postage on letters in either country, but postage on printed sheets and newspapers shall in all cases be pre-paid. The respective post office Departments of the contracting parties shall in their accounts, which are to be adjusted annually, be credited with all dead letters returned.

ARTICLE XVI.

The present treaty shall be in force from the date of the exchange of the ratifications for the term of ten years, and further, until the end of twelve months after either of the contracting parties shall have given notice to the other of its intention to terminate the same, each of the said contracting parties reserving to itself the right of giving such notice at the end of the said term of ten years, or at any subsequent term.

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Any citizen or subject of either party infringing the articles of this treaty shall be held responsible for the same and the harmony and good correspondence between the two governments shall not be interrupted thereby, each party engaging in no way to protect the offender or sanction such violation.

ARTICLE XVII.

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate of the said States, and by His Majesty the King of the Hawaiian Islands, by and with the advice of his Privy Council of State, and the ratifications shall be exchanged at Honolulu within eighteen months from the date of its signature, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the same in triplicate, and have thereto affixed their seals. Done at Washington in the English language, the twentieth day of December, in the year one thousand eight hundred and forty nine.

JOHN M. CLAYTON. [Seal] JAMES JACKSON JARVES. [Seal]

NOTES

The file of this treaty is complete, and the papers are in customary form. There is one original of the treaty, which, according to its final clause, was signed in triplicate; other papers in the file are the attested resolution of the Senate of January 14, the duplicate United States instrument of ratification of February 4, the certificate of the exchange of ratifications at Honolulu of August 24, of which there are triplicate examples in English, and the original proclamation of November 9, 1850. The Hawaiian instrument of ratification of August 19, 1850, is in English and includes the articles of the treaty.

Also in the treaty file is a photograph, received from the archives of Hawaii, of a second original of the treaty; from this it appears that the *alternat* was not observed except in respect of the signatures of the Plenipotentiaries; throughout the clauses the United States is named first, as in the text above printed.

No correspondence or other papers accompanied the message of President Taylor of December 21, 1849, submitting this treaty to the Senate (Executive Journal, VIII, 104). The resolution of advice and consent was adopted on January 14, 1850, by a vote of 44 yeas to 1 nay (*ibid.*, 120). There is mention of the treaty in the annual message of President Fillmore to Congress of December 2, 1850 (Richardson, V, 83).

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The Full Powers

In the preamble of the treaty the exchange of the full powers is recited. No record or copy of a full power given to Secretary of State Clayton has been found either in the archives of the Department of State or in the archives of Hawaii. The original full power given to James Jackson Jarves by the King of the Hawaiian Islands under date of April 24, 1849, in English and Hawaiian, is in the treaty file; the English version thereof reads as follows:

Kamehameha By the Grace of God, of the Hawaiian Islands, King.

To all whom these Presents shall come, Greeting:

Know Ye, that reposing special trust and confidence in the knowledge, judgement and integrity of James Jackson Jarves Esquire, accredited as Our Special Commissioner to the Government of the United States, of North America, We have invested him with full and all manner of power and authority, to meet and confer with any person or persons, duly authorized by the President of said United States, being invested with like power and authority, and with him, or them, to agree, treat, consult and negotiate of, and concerning peace friendship and commerce between Our Kingdom of the Hawaiian Islands, and the said United States, and to conclude and sign a Treaty or Treaties, Convention or Conventions, touching the premises, and all others for the good of Our Kingdom, transmitting the same to Us, for Our final ratification, by and with the advice of our Privy Council of State.

Given at Our Palace, in Honolulu, this twenty fourth day of April 1849, the twenty fourth year of Our Reign.

KEONI ANA KAMEHAMEHA

By the King and Premier
R. C. WYLLIE
Minister of Foreign Relations

Also in the treaty file is the Hawaiian full power of August 19, 1850, in English and Hawaiian, running to Robert Crichton Wyllie, Minister of Foreign Relations of Hawaii, to exchange the ratifications. The full power given to Charles Bunker, consul of the United States at Lahaina, for the same purpose, is under date of May 7, 1850 (D.S., 3 Credences, 352).

Recognition

This was the first formal treaty between the United States and Hawaii to be submitted to the Senate. For the "Articles of Arrangement" with the King of the Sandwich Islands negotiated by Captain Thomas ap Catesby Jones, U.S.N., and signed at Honolulu December 23, 1826, see Document 54.

Various agreements between Hawaii and European powers had been made prior to 1849, including (*a*) articles of November 16, 1836, with Great Britain (Foreign Relations, 1894, appendix II, 37); (*b*) a convention of July 24, 1837, with France (Von Martens, Nouveau recueil général de traités, IV, 282–83); (*c*) a convention of July 12, 1839, with France (*ibid.*, 285–86; Foreign Relations, 1894, appendix II, 37–38); (*d*) a convention of July 17, 1839, with France (Von Martens, Nouveau recueil général de traités, IV, 286–87; Foreign Relations, 1894, appendix II, 38); (*e*) articles of July 31, 1843, with

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Great Britain (with other papers in British and Foreign State Papers, XXXI, 1023–35); (*f*) a convention of February 12, 1844, with Great Britain (*ibid.*, XLIV, 671–73; Foreign Relations, 1894, appendix II, 65–66); (*g*) a treaty of March 26, 1846, with Great Britain (British and Foreign State Papers, XXXIV, 22–23); (*h*) a similar treaty of the same date with France (*ibid.*, XXXV, 1258–59; Foreign Relations, 1894, appendix II, 68–69); (*i*) a general convention or treaty of October 19, 1846, with Denmark (British and Foreign State Papers, XXXV, 252–54); (*j*) a general convention or treaty of January 8, 1848, with Hamburg; (*k*) an agreement of January 25, 1848, under the two treaties last mentioned.

Seven of those agreements (not including the conventions of July 24, 1837, and July 12, 1839, with France, and the agreements of 1843 and 1844 with Great Britain) are printed in Treaties and Conventions Concluded between the Hawaiian Kingdom and Other Powers since 1825, 3–20.

Definitive and formal recognition by the United States of the independence of the Hawaiian Kingdom is generally dated from 1842. Secretary of State Calhoun, in a note of July 6, 1844, addressed to Timoteo Haalilio and William Richards, Commissioners of the Hawaiian Government, wrote that "the President regarded his message to Congress of the 31st [30th] December, 1842, the proceedings of the House of Representatives thereon, and the appropriation made for the compensation of a commissioner of the United States, who was subsequently appointed to reside in the islands, as a full recognition on the part of the United States of the independence of the Hawaiian Government" (quoted in Foreign Relations, 1894, appendix II, 69). The message of President Tyler to Congress of December 30, 1842, communicated copies of the correspondence which had passed between the Hawaiian Commissioners and Secretary of State Daniel Webster (*ibid.*, 39–45). The former, in their note of December 14, 1842, expressed the desire that the Hawaiian Kingdom should be formally acknowledged as a sovereign and independent state and stated that they were authorized "to enter into negotiation with the authorities of the United States, by convention, treaty, or otherwise, whenever the latter shall acknowledge the sovereignty" of the King of the Hawaiian Islands. The answering note of December 19 was not precise on the question of recognition, containing these paragraphs (*ibid.*, 44–45):

> The advantages of your country to the navigators in the Pacific, and in particular to the numerous vessels and vast tonnage of the United States frequenting that sea, are fully estimated; and just acknowledgments are due to the Government and inhabitants of the islands for their numerous acts of hospitality to the citizens of the United States.
>
> The United States have regarded the existing authorities in the Sandwich Islands as a Government suited to the condition of the people, and resting on their own choice; and the President is of opinion that the interests of all the commercial nations require that that Government should not be interfered with by foreign powers. Of the vessels which visit the islands, it is known that a great majority belong to the United States. The United States, therefore, are more interested in the fate of the islands, and of their Government, than any other nation can be; and this consideration induces the President to be quite willing to

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declare, as the sense of the Government of the United States, that the Government of the Sandwich Islands ought to be respected; that no power ought either to take possession of the islands as a conquest, or for the purpose of colonization, and that no power ought to seek for any undue control over the existing Government, or any exclusive privileges or preferences in matters of commerce.

Entertaining these sentiments, the President does not see any present necessity for the negotiation of a formal treaty, or the appointment or reception of diplomatic characters. A consul or agent from this Government will continue to reside in the islands. He will receive particular instructions to pay just and careful attention to any claims or complaints which may be brought against the Government or people of the islands by citizens of the United States, and he will also be instructed to receive any complaint which may be made by that Government for acts of individuals (citizens of the United States) on account of which the interference of this Government may be requested, and to transmit such complaint to this Department.

It is not improbable that this correspondence may be made the subject of a communication to Congress, and it will be officially made known to the governments of the principal commercial powers of Europe.

It seems, indeed, that the views of Webster were not wholly in accord with those expressed later by Calhoun in the note of July 6, 1844, quoted above, for the first instruction written to a Commissioner of the United States to Hawaii contained this opening paragraph (D.S., Legation Archives, Hawaii, 1 Instructions, Hawaii, No. 1, March 15, 1843, original; Foreign Relations, 1894, appendix II, 60–61):

The accompanying message of the President to Congress of the 30th. of December, last, transmitting a correspondence between this Department and certain agents of the Sandwich Islands, then in this City, will acquaint you with the view which he entertains of the relations between the United States and those Islands, and with the objects and motives of this Government for cultivating and strengthening those relations. Congress having complied with his suggestion by providing for a Commissioner to reside at the Islands, you have been chosen for that purpose. A commission appointing you to the office will be found with the papers which you will receive herewith, and a letter from this Department addressed to that Minister of the King of the Islands who may be charged with their foreign relations, accrediting you in your official character. The title selected for your mission has reference, in part, to its purposes. It is not deemed expedient at this juncture fully to recognize the independence of the Islands, or the right of their Government to that equality of treatment and consideration which is due and usually allowed to those Governments to which we send, and from which we receive, diplomatic agents of the ordinary ranks. By this, however, it is not meant to intimate that the Islands, so far as regards all other powers, are not entirely independent; on the contrary, this is a fact respecting which no doubt is felt, and the hope that through the agency of the Commissioner that independence might be preserved, has, probably in a great degree, led to the compliance by Congress with the recommendation of the President.

Early Negotiations

The first "Commissioner of the United States for the Sandwich Islands" was George Brown, of Massachusetts, who was appointed on March 3, 1843, and who reached Honolulu on the following October 16 (D.S., 1 Despatches, Hawaii, No. 5, October 26, 1843). In the earliest instructions to Brown, of March 15, 1843, from Secretary of State Webster, the only allusion to the negotiation of a treaty is the following (D.S., Legation Archives, Hawaii, 1 Instructions, Hawaii, No. 1, original):

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Your attention is particularly requested to the nature of the fiscal regulations in force there [in Hawaii], to their effects upon foreign commerce generally, and to the policy of the Government in regard to this subject. If those regulations should be frequently changed, or if there should be cause to apprehend the imposition of discriminating duties upon our navigation and trade, the expediency of negotiating a treaty with that government, which would determine for a series of years the reciprocal rights and duties of the parties in regard to those subjects, will be taken into consideration.

Not until January 10, 1845, was a full power issued to Brown "to agree, treat, consult and negotiate of and concerning peace, friendship and commerce" (*ibid.*, original); and the accompanying instructions on the subject, of January 20, 1845, from Secretary of State Calhoun, were not very pressing, as will be seen from the following excerpt (*ibid.*, No. 4, original):

The United States, if it be desired by the Hawaiian government, are willing to enter into treaty stipulations, on the basis of those now existing between it and Great Britain [the convention of February 12, 1844, cited above]; and I herewith transmit to you full powers to conclude such a Convention. But it is to be understood that the treaty is not to bar the claim for damages in the case of Mr [John] Wiley,[1] (if any have been sustained) nor of any citizen or citizens of the United States for injuries accruing prior to its adoption, should it be made. I have further to say that if Great Britain or France should hereafter consent, in cases involving the rights of their respective citizens, to a trial by Jury *de mediatate lingua*, the United States would be willing to make the same concession. But whether there be or be not treaty stipulations between us and the Islands, the United States can never consent that their citizens should be put on any other footing than those of the most favored nations.

However, some months before the date of those instructions a letter from King Kamehameha III to President Tyler had informed the latter that "Mr Brown . . . is not agreeable to my Government" (D.S., 1 Despatches, Hawaii, No. 18, September 24, 1844, enclosure of September 20, 1844; received February 15, 1845). Moreover, the instruction to Brown of January 20, 1845, was not received by him until the following August 12 (D.S., 3 Despatches, Hawaii, No. 35, August 27, 1845); and by note of the Hawaiian Minister of Foreign Relations of July 29, 1845, Brown had been formally interdicted "from all future correspondence with this or any other department of His Majesty's Government, from the time you receive this communication" (*ibid.*, No. 34, August 18, 1845, enclosure M). That interdiction was not removed until after the arrival at Honolulu of Brown's successor and only two or three days before the presentation of the latter to the King on June 20, 1846 (*ibid.*, No. 70, June 20, 1846, enclosure A; and 2 *ibid.*, No. 1, June 22, 1846).

The successor of Brown as Commissioner was Anthony Ten Eyck, of Michigan, who was appointed on April 19, 1845, and who reached Honolulu on June 9, 1846 (*ibid.*). Ten Eyck was furnished with a full power dated September 10, 1845, "to agree, treat, consult and negotiate of and concerning peace, friendship and commerce"

[1] As to this case, see Correspondence between H.H.M. Secretary of State and the U.S. Commissioner, in the Case of John Wiley, an American Citizen, a pamphlet of seventy-eight pages; also Foreign Relations, 1894, appendix II, 66–68.

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(D.S., Legation Archives, Hawaii, 1 Instructions, Hawaii, original), and his instructions of the same date from Secretary of State Buchanan included the following (*ibid.*, No. 1, original):

> You will be furnished with full powers to negotiate a Treaty with the Hawaiian Government. I transmit you a copy of the Treaty now in existence between His Majesty and Great Britain. This may serve as a model for your Treaty; although you are not limited to its provisions should experience present to your mind, after you reach the Islands, any other stipulation of importance. It has the merit of being both brief and comprehensive. If the Governments of Great Britain and France have modified the sixth article of their Treaties [the conventions of February 12, 1844, and July 17, 1839, respectively, cited above] in such a manner as to enable the Hawaiian Government to impose a higher duty than five per cent upon the importation of wines and ardent spirits, you will consent to a similar modification. The cause of morality requires this concession. The United States in their commercial arrangements desire no advantage over other powers; and least of all would they wish to obtain them from the Hawaiian Government.

The mission of Ten Eyck was not considered to be terminated until December 31, 1849 (D.S., 2 Despatches, Hawaii, No. 63, December 8, 1849); his despatches are all in the volume last cited. The treaty negotiations of Ten Eyck extended intermittently over a period of about two years (October 1846 to December 1848) and were wholly unsuccessful; they are described in detail in the despatches and enclosures thereto (No. 5, October 1, 1846; No. 8, December 21, 1846; No. 12, March 27, 1847; No. 15, May 25, 1847; No. 17, June 2, 1847; No. 21, November 3, 1847; No. 30, February 15, 1848; No. 31, March 2, 1848; No. 34, May 4, 1848; No. 36, June 8, 1848; No. 47, March 5, 1849; No. 51, April 2, 1849); while Ten Eyck knew from the outset of the Hawaiian treaties with Great Britain and France of March 26, 1846 (cited above), his first proposals went much farther than did the terms of those treaties,[1] were of a harsh and drastic character, and were also quite lengthy; almost from the beginning of his mission the attitude of Ten Eyck toward the Hawaiian Government was critical and hostile (No. 3, July 18, 1846); his proposals were not only wholly unacceptable to the Hawaiian Government, but were disapproved by the Department of State in the instruction from Secretary of State Buchanan of June 18, 1847, from which these para-

[1] To Articles 3 and 6 of which the Hawaiian Government took exception; those articles read as follows in the treaty with Great Britain (Treaties and Conventions Concluded between the Hawaiian Kingdom and Other Powers since 1825, 9–10) and similarly in that with France (*ibid.*, 7–8):

> ARTICLE III. No British subject accused of any crime whatever shall be judged otherwise than by a jury composed of native or foreign residents, proposed by the British Consul and accepted by the Government of the Sandwich Islands.
>
> ARTICLE VI. British merchandise or goods recognized as coming from the British dominions, shall not be prohibited, nor shall they be subject to an import duty higher than five per cent. *ad valorem*. Wines, brandies, and other spirituous liquors are however excepted from this stipulation, and shall be liable to such reasonable duty as the Hawaiian Government may think fit to lay upon them, provided always that the amount of duty shall not be so high as absolutely to prohibit the importation of the said articles.

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graphs are excerpted (D.S., Legation Archives, Hawaii, 1 Instructions, Hawaii, No. 6; perhaps the original, but unsigned):

> I scarcely deem it probable that the Hawaiian Government will conclude a Treaty with the United States in conformity with the projet which you have transmitted to the Department. They will consider that this would trench too much upon their rights as an independent nation. Nor can I concur with you in opinion that if such a Treaty, however desirable, cannot be procured, we would be as well off without any. I have reëxamined the British Treaty [of March 26, 1846, cited above] with the Hawaiian Government, and confess I think that a similar Treaty with the United States could not fail to prove advantageous to our interests. You are, therefore, again instructed to conclude such a Treaty if a better cannot be obtained.
>
> It appears that the Hawaiian Government has appealed to Great Britain to annul the third article of that Treaty, which provides that "no British subject accused of any crime whatever, shall be judged otherwise than by a Jury composed of foreign residents proposed by the British Consul and accepted by the Government of the Sandwich Islands": and a similar application has been made to France. This fact renders it highly improbable that you will obtain the assent of that Government to the terms of your projet.

Following the receipt on January 28, 1848, of the instruction just cited, Ten Eyck resumed negotiations for a treaty and presented a new draft based partly on the treaties of 1846 but containing, also, articles regarding the holding of real estate (D.S., 2 Despatches, Hawaii, No. 30, February 15, 1848, and enclosures); these proved unacceptable, and Ten Eyck finally offered (with a revised draft as an alternative) to sign a treaty similar to those of 1846 (*ibid.*, No. 34, and enclosure; No. 36 and enclosure A); but the Hawaiian Government, on February 29, 1848, had formally protested against Articles 3 and 6 of the treaties of 1846, was unwilling to make another treaty to the same effect, and preferred to await the opinions and the pleasure of the President of the United States (*ibid.*, No. 36, enclosures C and D, May 26 and June 7, 1848); Ten Eyck then wrote (June 8, 1848) that he would transmit the whole correspondence to his Government (*ibid.*, enclosure E). Notwithstanding this, there were some further exchanges, including a Hawaiian draft, beginning late in the following September (see *ibid.*, No. 47, March 5, 1849, enclosures); but all official intercourse between Ten Eyck and the Government of Hawaii was terminated by the decision of the latter, dated December 11, 1848 (see *ibid.*, Nos. 44 and 45, December 19, 1848, and enclosures; and also Official Correspondence between Anthony Ten Eyck, Esquire, and Robert Crichton Wyllie, Esquire, His Hawaiian Majesty's Minister of Foreign Relations, Showing the Causes of the Cessation of Official Intercourse with Anthony Ten Eyck, Esquire, as U.S. Commissioner). Notice of the cessation of official intercourse with Ten Eyck from December 14, 1848, was given in the note of Wyllie to the Secretary of State dated January 8, 1849, received June 20, 1849 (D.S., 2 Notes from the Hawaiian Legation); with that note are voluminous supporting enclosures, among which are various prints from the Polynesian (the official journal of the Hawaiian Government) of official correspondence, including that in the pamphlet last cited.

The general course of Ten Eyck in his mission was the subject of lengthy disapproval and censure in the instruction of Secretary of

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State Buchanan of August 28, 1848 (D.S., Legation Archives, Hawaii, 1 Instructions, Hawaii, No. 7, copy enclosed with instruction No. 8, of September 20, 1848; received by Ten Eyck some time between March 11 and 14, 1849; see D.S., 2 Despatches, Hawaii, No. 48, March 14, 1849). For Ten Eyck's explanation and defense, see *ibid.*, No. 47, March 5, 1849, and enclosures, and No. 51, April 2, 1849.

The Two Commissioners from Hawaii

In 1849 three treaties between the United States and Hawaii were negotiated; the earliest in date was that signed at San Francisco on October 22, 1849, by Charles Eames on behalf of the United States and by Gerrit Parmile Judd on behalf of Hawaii; the second was signed at Washington on December 6, 1849, by Secretary of State Clayton and James Jackson Jarves; the third, the present treaty, which alone of the three went into force, was also signed at Washington by the two Plenipotentiaries last named, on December 20, 1849; those three treaties are, for convenience, hereinafter generally mentioned, respectively, as the San Francisco Treaty, the treaty of December 6, and the final treaty.

Of the two Hawaiian Commissioners mentioned, the first to be appointed was James Jackson Jarves, whose full power from the King of the Hawaiian Islands, dated April 24, 1849, has been described above. Jarves had sailed from Honolulu in February 1848 (D.S., 2 Despatches, Hawaii, No. 30, February 15, 1848) and was located at Boston, Massachusetts. Before leaving Hawaii Jarves had been editor of the Polynesian, the official journal of the Hawaiian Government, published weekly at Honolulu.

Besides his full power, Jarves had the following letter of credence of the same date (and also, it seems, one of September 10, 1849), signed by the Minister of Foreign Relations of Hawaii, Robert Crichton Wyllie (D.S., 2 Notes from the Hawaiian Legation):

Department of Foreign Relations
Honolulu 24 April 1849.

Sir The King of the Hawaiian Islands, has commanded me to acquaint you that, His Majesty has appointed James Jackson Jarves Esquire, His special Commissioner, to the Government of the United States, and to make known to that Government, through you, His Majesty's views and wishes, upon all matters relating to the Foreign Relations of His Kingdom, to the formation of a Treaty of Peace, friendship and Commerce, with the United States, (so just and reciprocal in its obligations, as may lead to its adoption, by the Governments of Great Britain and France), to the preservation of his Independence, the security of His neutrality, during all Wars, that may arise, and the greater regularity and uniformity of His Relations, with all Foreign Nations.

Mr Jarves is intimately acquainted with these Islands, in all their internal, and external Relations; he possesses the confidence of the King, in an eminent degree, and His Majesty has commanded me, to request you, to attach full credit to all that Mr Jarves may communicate to you, on the part of the Hawaiian Government, on important matters, that he will submit to you, and to afford him that assistance, which the King considers you, so well able to give, and which, from experience of their past beneficence, He believes the United States, will willingly sanction.

Mr Jarves will deliver this letter, and assure you of the Kings desire to continue in the enjoyment of the friendly sympathy of the Government, and people of the

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United States; and His Majesty commands me, to add, in the most emphatic terms, that He desires to cultivate the most friendly Relations with the United States, Great Britain, France, and all other Foreign Nations, upon the principle of perfect equality and fairness, to all, and of meriting the friendly interest which they have been pleased to express, in favour of His right to govern His own Islands, independent of all Foreign Control.

The King and His Government believe that such a policy is the most favourable, to all Great Maritime Nations, which have commercial interests, in the Pacific Ocean, and one, which, if disregarded by any one nation, might afford an excuse to some other, to attempt to subjugate His Majestys small Kingdom.

I am glad to have this opportunity to convey to you, the assurance of the very high consideration, with which I have the honour to be, Sir, Your most obedient humble servant

R. C. WYLLIE

To the Honourable the SECRETARY OF STATE
Washington

The Plenipotentiary of Hawaii second to be appointed was Dr. Gerrit Parmile Judd, who had gone to the Hawaiian Islands in 1828 as a medical missionary, had been Hawaiian Minister of Foreign Relations, and was at the time Minister of Finance. His full power from the King of the Hawaiian Islands was dated September 10, 1849, the day before his departure from Honolulu; like that previously given to Jarves (described above), it is written in English and Hawaiian, and it is generally in the same form; but Judd is said to be "accredited as Our Special Commissioner and Plenipotentiary Extraordinary to the Government of the United States of North America", he is given authority to treat "either seperately from or jointly with Mr Jarves", and the instrument contains this additional paragraph, which is not in the earlier power (D.S., 2 Notes from the Hawaiian Legation, copy sent by Charles Eames with his despatch of October 22, 1849, cited and quoted below):

And further, either separately or jointly, as aforesaid, We grant full power to, and We command him the said Gerrit Parmile Judd Esquire, to represent and vindicate all our Rights as Sovereign of the Hawaiian Islands, and all Our just claims for damages, reparations and redress, under the late unjust Demands and Outrages made and perpetrated, by the Naval Forces of France, and, with that view if, necessary, to obtain the friendly meditation [mediation] of the Government of the United States

The credential letter given to Judd was not presented by him in person, but was sent to the Secretary of State with a note of December 11, 1849 (quoted below); it was, like that of Jarves, not merely formal, and it is written throughout in the hand of the Minister of Foreign Relations of Hawaii, as follows (D.S., 2 Notes from the Hawaiian Legation):

DEPARTMENT OF FOREIGN RELATIONS
Honolulu 10th September 1849

SIR I have the honour to refer you to my credential letters of the 24th April last, and of this date, by James Jackson Jarves Esquire, and, I am directed by the King, further to make known to you, that under the recent unjust hostilities and reprisals, perpetrated on this unoffending and unresisting Kingdom, by the Admiral and the Consul of France, His Majesty has seen fit to nominate and appoint Gerrit Parmile Judd Esquire, His Minister of Finance to be associated with Mr Jarves, as His Majesty's Special Commissioner and Plenipotentiary

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Extraordinary, to the Governments of the United States, Great Britain and France, to act, either separately from, or jointly with Mr Jarves, as His Majesty's interests may require.

The late unhappy events, originating in personal feelings and objects of M Dillon the Consul of France will, it is hoped, in your view and in that of the President, place in a stronger light the necessity of forming with this Government such a Treaty, and establishing such Diplomatic regulations as Mr Jarves was instructed to frame, in concert with the Government of the United States, in the hope of, afterwards, being able to induce the Governments of Great Britain and of France, to adopt, precisely, the same, as the rule of their relations, with this Kingdom.

Mr Judd having been on the Islands, since 1828, and since 1842, having held several important appointments under this Government, whereby he has acquired much knowledge relating to the Islands, to the native inhabitants, to the interests of foreigners and to the policy of this Government, on all these matters, and on others embraced in his instructions, you are, respectfully, requested to attach full faith and credit to what he may say.

Mr Judd is accompanied by Alexander Liholiho, the King's Heir presumptive (by adoption, and by his brother Lot Kamehameha, the former born on the 9th February 1834, and the latter, on the 11th December 1830. The King and Government take great interest, in the improvement of these young Chiefs, who, if spared, in default of direct issue from the King, are destined to exercise an important influence upon the Hawaiian people.

I am happy to have this opportunity to renew the assurance of the most distinguished respect and consideration with which I have the honour to be, Sir Your most obedient humble Servant

R. C. WYLLIE

The Honourable The SECRETARY OF STATE at Washington

The mission of Judd was, in the view of the Hawaiian Government, made necessary by the serious controversy which had arisen with the Government of France. The chief question at issue was the rate of duties upon imports of French liquors under the treaty between France and Hawaii of March 26, 1846. Coercive measures were taken by French naval forces beginning August 25, 1849, to which no resistance was offered by the Hawaiian Government. The French demands (ten in number) had been presented three days earlier. The correspondence of the latter part of August and the early part of September 1849 and an account of the measures taken are in the Polynesian of September 8, 1849 (D.S., 2 Despatches, Hawaii, No. 56, September 10, 1849, enclosure; see also Foreign Relations, 1894, appendix II, 70–78; a summary is in Kuykendall, History of Hawaii, 180–83).

The instructions to Jarves and to Judd for the missions to the United States, France, and Great Britain (a copy whereof is in D.S., 4 Despatches, Hawaii, with despatch No. 8, of March 31, 1851), were the same, dated in part April 28 and in part September 10, 1849. Insofar as they were for the governance of the mission to Washington, they dealt with relations with France and Great Britain, particularly the former, as well as with the United States. They referred to ad-valorem duties; they recommended a declaration by the United States similar to that of Great Britain and France signed at London on November 28, 1843 (British and Foreign State Papers, XLIV, 646; Foreign Relations, 1894, appendix II, 64, 120); they suggested treaties of identic "tenor and effect" between Hawaii and

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the three powers, respectively; they represented the advantage of a joint agreement between those powers to respect the neutrality of Hawaii; and they discussed the conduct of foreign agents, the most-favored-nation clause, and forms and ceremonies. In respect of a treaty with the United States they directed the submission of the draft proposed to Ten Eyck on October 13, 1848, adding that the Commissioners were not to consider themselves "fettered" by that draft "further than as showing the views of this Government generally". The draft in question, with a preamble and a final clause, contains the following ten articles (D.S., 2 Despatches, Hawaii, No. 47, March 5, 1849, enclosure; collated here with the copy enclosed with the note of Wyllie to the Secretary of State dated January 8, 1849, and received June 20, 1849, in D.S., 2 Notes from the Hawaiian Legation; a pencil addendum to that copy suggests "an article embracing a Postal arrangement"):

I, There shall be perpetual peace, and amity, between the United States of America and the King of the Hawaiian Islands, His Hevis [Heirs] and successors.

II, The Citizens of the United States, residing within the Dominions of the King of the Hawaiian Islands, shall enjoy the same protection, in regard to their civil rights as well as to their persons and properties, as native subjects; and the King of the Hawaiian Islands engages to grant to the Citizens of the United States, the same rights & privileges, which now are or here-after may be, granted to, or enjoyed by, any other foreigners, subjects of the most favoured nation.

III, The protection of the King of the Hawaiian Islands, shall be extended to all vessels of the United States, their officers & crews. In case of shipwreck, the Chiefs and inhabitants of the different parts of the Hawaiian Islands, shall succour them, & secure them from plunder. The salvage dues shall be regulated, in case of dispute, by Arbitrators chosen by both parties.

IV, The desertion of Seamen embarked on board of Vessels of the United States, shall be severely repressed, by the local authorities, who shall employ all the means, at their disposal, to arrest Deserters; and all reasonable expences of capture, shall be defrayed, by the Captains, or Owners of the said vessels.

V, Merchandise of the U.S., or goods recognized as coming from Ports belonging to the U.S. shall not be subject to an import duty, higher, than that levied upon the Merchandise & goods of the most favoured nation.

VI, All goods, the produce or Manufacture of the Hawaiian Islands, shall be admitted into the ports of the U.S. bordering on the Pacific, at precisely the same rate of duty, that goods the produce or Manufacture of the U.S. and their Territories are admitted at, into the ports of the Hawaiian Islands.

VII, No Tonnage, Import or other duties shall be levied on vessels of the U.S., or goods imported in vessels of the U.S. beyond what are levied, on vessels or goods of the most favoured nation; and no tonnage, import or other duties shall be levied on Hawaiian vessels, or goods imported in Hawaiian vessels, in ports belonging to the U.S., beyond what are levied on vessels or goods of the most favoured nation.

VIII, The subjects of the King of the Hawaiian Islands, shall in their commercial or other relations with the U.S. be treated at the footing of the most favoured nation.

IX, This treaty shall endure for years from the date of its ratification by the President of the United States.

X, The stipulations contained in this Treaty shall not be permanently binding, till it be ratified by the President of the U.S.; but it is mutually agreed that, provisionally, it shall take effect, from the date of its ratification, by His Majesty the King of the Hawaiian Islands.

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The San Francisco Treaty

Charles Eames, of New York, was appointed Commissioner to the Sandwich Islands on January 12, 1849; his full power "to agree, treat, consult and negotiate of and concerning general commerce between the United States and the Sandwich Islands" was dated February 10 (D.S., 3 Credences, 262), and his instructions from Secretary of State Buchanan were of February 16, 1849, as follows (D.S., 2 Instructions, Hawaii, 14–19):

The opportunity which has been afforded you to peruse the instructions to your predecessors and their communications to this Department, has made you acquainted with the history and present state of our diplomatic relations with the Hawaiian Government. Neither Mr Brown nor Mr Ten Eyck has been able to succeed in negotiating a treaty with that government under their instructions. This is a principal object of your mission and all the instructions addressed to either of them upon this subject you will consider applicable to yourself.

You are authorized, as your predecessors were, to conclude a Treaty with the Hawaiian Government similar in all respects to their Treaties with Great Britain and France [of March 26, 1846, cited above]. But surely that Government would prefer to conclude a Treaty of commerce and navigation with the United States similar to our Treaties with other civilized and independent Nations and this the President would prefer.

The commercial treaties between the United States and foreign powers are based upon principles recognized by the laws of the United States which have from time to time been enacted for the purpose of regulating our foreign trade. The only two enactments upon this subject now in force are contained in the 4th Section of the Act of Congress approved the 7th January, 1824 [4 Statutes at Large, 2–3] . . . and the first section of the Act approved 24th May 1828 [*ibid.*, 308–9]. . . .

The effect of these enactments is to authorize the President to admit the vessels of foreign countries into the United States upon the same terms with our own vessels, either when those vessels bring the productions of the Countries to which they belong or those of any other foreign country, provided similar privileges are extended to vessels of the United States. Consequently, the coasting trade is the only branch of our commerce in which foreigners cannot participate. The President is willing to conclude with the Hawaiian government a treaty of reciprocity. To entitle a Treaty to this appellation, however, it will be necessary to take the circumstances of the respective countries into consideration. To offer to admit the Hawaiian vessels into our ports upon the basis of the act of Congress of 1828 would obviously give those sailing or claiming to sail under that flag an undue advantage. The vast extent, the great and increasing population of the United States with their various wants, would offer to Hawaiian vessels inducements for supplying them with the productions of other countries, either from Hawaiian ports or elsewhere, which the comparatively limited territory and sparse population of the Sandwich Islands could not in return offer to the vessels of the United States. This basis for a treaty would be the more objectionable if the Department is correctly informed that the right to use the Hawaiian flag is easily obtained by foreigners, and that many engaged in the navigation of the Islands are enterprizing and not very scrupulous Europeans.

The President is consequently of opinion that a Treaty with the Sandwich Islands based upon the Act of Congress of 1824, above referred to, the principles of which were adopted in the two first articles of our Convention with Great Britain of 1815 [Document 35], would be the most equitable and expedient. As those parts of the Treaty which do not relate to trade are comparatively unimportant, you can introduce any other articles of our recent Treaties which you may deem necessary. It would be advisable, however, to make the Treaty for a term of years, say eight, to end at a year's notice by either party after that time.

In the 8th volume of the Statutes at large you will find a collection of all our Treaties with Foreign nations up to the date of that publication. Several of these Treaties are of Direct reciprocity, such as you are authorized to conclude

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with the Hawaiian Government. The last of the kind concluded by the United States was with the two Sicilies, with a copy which, dated on the 1st December 1845 [Document 118] you are furnished. You may adopt this as your general model. The sixth article of it provides for the succession to personal property only. This ought, also, to be extended to real estate; because many American citizens hold lands in the Islands. If this cannot be accomplished in its full extent, then you might agree to the 7th Article of our Treaty with Hanover of the 20th May 1840 [Document 92], substituting this for the 6th Article of the Treaty with Naples.

Should the Hawaiian Government decline to conclude a general Treaty of direct reciprocity with the United States; and object to the conclusion of a Treaty similar to those with Great Britain and France on account of objections to the third and sixth articles of these Treaties, you can answer that whilst the United States are unwilling to be placed in a worse condition than the most favored nation, yet they will agree to any reasonable modification of these articles which may be made in the existing Treaties with these Powers. Indeed, should, this become necessary, you might propose to insert the following article or something like it in the Treaty.

> ARTICLE 9. Should the Hawaiian Government and the Governments of Great Britain and France, abolish, change or modify the third and sixth articles of their existing Treaties the corresponding third and sixth Articles of the present Treaty shall no longer remain in force, provided the United States shall continue in all respects to be placed on the footing of the most favored nation.

This would obviate every objection; and still place us in as favorable a position as any other nation: and it cannot be denied that these articles are open to serious objections.

The Hawaiian authorities have uniformerly professed a friendly disposition towards the United States. It must be acknowledged that this profession is vouched for by too many obvious motives of sympathy and interest to allow its sincerity to be disbelieved. Still under all the circumstances we shall have a right to consider and shall in fact consider the issue of your negotiation for a treaty the test of the sincerity of the professions of that Government.

The great impulse which the intercourse between the Islands and our territory on the Pacific has recently received, and the probability that this intercourse will augment in a rapid ratio, makes it important that the commercial relations between the two countries should be regulated by a treaty. This is important, not to the United States alone. Without a treaty, the productions of the Islands introduced into the United States in Hawaiian vessels, would, according to the 11th section of the tariff act of 1842 [act of August 30, 1842, 5 Statutes at Large, 561], be chargeable with an addition of ten per cent to the respective rates of duty imposed on the articles of merchandize of which the cargo may consist, by the Tariff act of 1846 [act of July 30, 1846, 9 *ibid.*, 42–49]. The exaction of this duty would, it is believed, seriously and injuriously affect the trade between the United States and the Islands in Hawaiian vessels, and even if that government should countervail it by the adoption of any regulation which would discourage United States vessels from engaging in the same trade, the restriction would probably so increase the freight on Hawaiian sugar and other productions which now find a nearer and ready market in California and Oregon, as to give a preference to similar articles from the Mexican or Peruvian coast. As the encouragement of the cultivation of sugar is understood to be a favorite object of Hawaiian policy, the willingness of that government to avoid a result apparently so well calculated to thwart it, cannot be doubted.

You are aware how greatly the Sandwich Islanders are indebted to the Christian missionaries resident among them for their progress in civilization. The zealous and disinterested labors of those missionaries have probably resulted in causing their advice and opinions upon other subjects than those relating to their calling to be respectfully listened to and to be perhaps decisive with the Hawaiian people and government.

You will consequently by all honorable means cultivate the most friendly relations with the missionaries.

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Sailing from an Atlantic port on July 2, 1849, on the U.S. frigate *Savannah*, the flagship of the Pacific Squadron, under command of Captain Philip F. Voorhees, U.S.N., Eames arrived at San Francisco on the following August 27 [1] (D.S., 4 Despatches, Hawaii, August 30, 1849; Naval Records and Library, Pacific Squadron, Commodore Jones' Cruise, November 4, 1847, to July 1, 1850, No. 108, despatch No. 64, of August 29, 1849). There, on October 4, he met Judd, who had left Honolulu on September 11 (D.S., 2 Despatches, Hawaii, No. 56, September 10, 1849; Judd, Honolulu Sketches of Life in the Hawaiian Islands, 195). The negotiations which ensued resulted in the signing of a treaty on October 22, 1849, and Eames thus reported under the same date (D.S., 4 Despatches, Hawaii, No. 1):

I have the honor to transmit to you, herewith, a Treaty of Amity, Commerce and Navigation, between the United States and the Sandwich or Hawaiian Islands, which, in pursuance of my Instructions bearing date of 16th of February last, I have, this day, concluded and signed, in quadruplicate, with Hon G. P. Judd, Special Commissioner and Plenipotentiary Extraordinary of his Hawaiian Majesty. I transmit also a copy, duly certified, of Mr Judd's Full Power [described and cited above], together with copies of two notes [of October 5, 1849] interchanged between him and myself, and explaining the circumstances which induced us to enter upon Negociations at this place. It is proper, however, for me to add that Mr Judd distinctly informed me that he deemed it altogether improbable, that the Hawaiian Government would be willing to negociate with me at Honolulu, during his absence; his mission being a special one, and instituted expressly for the purpose of committing to his hands, the management of Negociations with the United States and other Powers.

By reference to my Instructions, the Department, will, I think, perceive that the Treaty secures to the United States every advantage which I was instructed to ask, and grants, in return, nothing, which I was not instructed to offer.

The concluding clause of Article II contains a stipulation in favor of the United States, and not reciprocal. This, I was not instructed to ask, but I deemed it important, in view of the fact, that the trade between the Sandwich Islands, and China and South America, is already considerable and is increasing, while the Hawaiian Government is compelled, under its existing Treaties with England and France, to admit *all goods whatever*, (except spirituous liquors,) when imported *in vessels of those nations*, at a duty of only five per cent. The clause in question places vessels of the United States on the same footing with English or French vessels, in respect to the Chinese or South American Trade.

I was instructed to secure if possible to American Citizens, the right of succession to Real, as well as Personal, Property in the Islands. This question has heretofore been much and ineffectually discussed, between my predecessors and the Hawaiian Government. It will be found, I trust, to be settled, in a satisfactory manner in Article IX which secures to our Citizens such right of succession in its fullest extent, without derogating in other respects from the established policy of either Government, in regard to the acquisition of Real Property by Aliens.

The subjects of the Mail Steam vessels, and the Whale-Ships of the United States, were not specially referred to, in my Instructions; but the stipulations contained in Articles VI and VII, concerning these two classes of vessels, being wholly in favor of the United States, and inserted without any special equivalent, will, I hope, be deemed judicious.

Mr Judd expressed a strong desire to insert in the Treaty, some such provision as that contained in Article XIV, with a view to the securing some similar stipulation on the part of the French Government; and the Article as it stands, seems wholly unobjectionable.

In view of the declaration and engagement [cited above] jointly put forth and reciprocally entered into, by the English and French Governments, under date

[1] A short passage around the Horn for that period.

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of 28th November 1843, to the effect that both those Governments will consider the Sandwich Islands as an Independent State, and will never take possession of any part of them, either under the form of a Protectorate or otherwise, Mr Judd pressed very earnestly the insertion in the Treaty, of a separate and independent declaration and engagement to the same effect, by the Government of the United States.

In reply, I stated that, while, in my judgment, no higner evidence of the disposition of the Government of the United States, fully to respect the independence of the Sandwich Islands, could be given, than was to be found in my Instructions to negociate, with the Government of those Islands, a Treaty of direct reciprocity, similar to those which the United States have negociated with other civilised and independent Powers, I yet could not regard those Instructions as authorising me to insert in the Treaty, any such unusual declaration or engagement. In this view Mr Judd acquiesced, and he will probably bring his proposition to the attention of the Department at Washington.

It may be beyond my province to express any opinion on the topic, yet I would respectfully suggest to the Department, that Mr Judd may, possibly, be willing, in return for such an engagement on the part of the United States, to concede to all American Citizens the unlimited right to acquire and hold Real Property in the Islands. In that case, considering the present situation of the Islands, the state of things here in California and Oregon, and the position already assumed on the subject by two other great Powers, the Department may regard the proposition, if so presented, with some degree of favor.

Having by the Negociation of this Treaty, accomplished what my Instructions designate as the "principal object" of my mission, and not perceiving any particular exigency of the public Service, requiring my immediate presence at Honolulu, I beg leave very respectfully, in pursuance of my original intentions, well understood when I left Washington, to offer my resignation[1] of my appointment as Commissioner, unless it may be the pleasure of the Department to grant me, under these special circumstances, a short leave of absence.

The San Francisco Treaty (D.S., Unperfected P1) was signed in quadruplicate in English and Hawaiian. Two examples were sent by Eames to Washington; one of these (hereinafter called the first original) has the pages of the English version preceding those of the Hawaiian; in the other (called the second original) the order of binding the versions is reversed; but in all four versions the signature of Charles Eames is on the line above the signature of Gerrit Parmile Judd.

The two examples were transmitted separately, the first original with the cited despatch of October 22, 1849, by the hands of Acting Lieutenant Edward F. Beale, U.S.N., who was bringing naval despatches and who had discretion to go either by the isthmus route or by the overland route through Mexico, and the second original by Edward Conner, of New York, as bearer of despatches, who traveled by the isthmus route, thought to require some ten days longer than the other (D.S., 4 Despatches, Hawaii, No. 2, October 25, 1849, with postscript of November 1; Naval Records and Library, Pacific Squadron, Commodore Jones' Cruise, November 4, 1847, to July 1, 1850, No. 132, October 31, 1849). As notations on the various writings show, both sets of papers reached the Department of State on the same day, December 8, 1849, those carried by Lieutenant Beale being stated to have been delivered at 9 a.m. The date, it will be observed, is two days later than that of the treaty of December 6 and thus inter-

[1] Accepted to take effect February 12, 1850 (D.S., Legation Archives, Hawaii, 1 Instructions, Hawaii, No. 4, December 31, 1849).

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mediate the signing of that treaty and the signing of the final treaty on December 20, 1849.

The English version of the San Francisco Treaty (collated with the first original) follows:

The United States of America and His Majesty the King of the Hawaiian or Sandwich Islands, equally animated with the desire of maintaining the relations of good understanding which have hitherto so happily subsisted between their respective States, and regulating the Commercial intercourse between them, have agreed to enter into Negociations for the Conclusion of a Treaty of Amity Commerce and Navigation, for which purpose, they have appointed Plenipotentiaries, that is to say: The President of the United States of America, has conferred full powers on Charles Eames appointed Commissioner of the United States to the Sandwich Islands; and His Majesty the King of the Hawaiian or Sandwich Islands, has conferred like full powers on Gerrit Parmile Judd his said Majesty's Minister of Finance and Special Commissioner and Plenipotentiary Extraordinary to the United States; and the said Plenipotentiaries having met at San Francisco in California on their routes respectively to the Sandwich Islands, and to the City of Washington, and having exchanged their full powers, found in good and due form, have concluded and signed the following Articles:

ARTICLE I.

There shall be reciprocal liberty of navigation and commerce between the United States of America and the Kingdom of the Hawaiian or Sandwich Islands.

No higher or other duty of customs or other impost shall be imposed on the importation into the Sandwich Islands of any goods or articles of the growth, produce or manufacture of the United States, and no higher or other duty of customs or other impost shall be imposed on the importation into the United States of any goods or articles of the growth produce or manufacture of the Sandwich Islands, than are or shall be imposed upon the like goods or articles being of the growth produce or manufacture of any other foreign country.

No other or higher duties or charges shall be imposed in the Sandwich Islands, on the exportation of any articles to the United States, or in the United States on the exportation of any articles to the Sandwich Islands, than such as are or shall be payable on the exportation of the like articles to any other foreign Country.

No prohibition shall be imposed on the exportation or importation of any articles, of the growth, produce or manufacture of the United States, or of the Sandwich Islands, to or from the Ports of the said Islands or of the said United States, which shall not equally extend to all other nations: and the United States of America, and His Majesty the King of the Kingdom of the Sandwich Islands do hereby engage, that the subjects or citizens of any other State or nation shall not enjoy any favor, privilege, or immunity, whatever, in matters of commerce and navigation which shall not also and at the same time be extended to the subjects or citizens of the other high contracting party, gratuitously if the concession in favor of that other state shall have been gratuitous, and in return for a compensation, as nearly as possible of proportionate value and effect, if the concession shall have been conditional.

ARTICLE II.

All goods and articles of the produce or manufacture of either Country, which can be legally imported into either country, from the other in ships of that other country, and thence coming, shall, when so imported, be subject to the same duties, and enjoy the same privileges, whether imported in ships of the one Country, or in ships of the other: and in like manner, all goods, and articles which can legally be exported or reexported from either country to the other, in ships of that other country, shall, when so exported or reexported, be subject to the same duties, and be entitled to the same privileges, drawbacks, bounties, and allowances, whether exported in ships of the one country, or in ships of the other: and all goods and articles, of whatever description, not being of the produce or

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manufacture of the United States, which can be legally imported into the Sandwich Islands, shall when so imported in vessels of the United States pay no other or higher duties, imposts, or charges than shall be payable upon the like goods, and articles, when imported in the vessels of the most favored foreign nation, other than the nation of which the said goods and articles are the produce or manufacture.

ARTICLE III.

No duties or charges of tonnage harbor, lighthouses, pilotage, quarantine or other similar duties, of whatever nature or under whatever denomination, shall be imposed in either country upon the vessels of the other, in respect of voyages between the United States of America and the Sandwich Islands, if laden, or in respect of any voyage, if in ballast, which shall not be equally imposed in the like cases on national vessels.

ARTICLE IV.

It is hereby declared, that the stipulations of the present treaty are not to be understood as applying to the navigation and carrying trade between one port and another, situated in the States or territories of either contracting party, such navigation and trade being reserved exclusively to national vessels: vessels of either country, shall however be permitted to load or unload the whole or part of their cargoes, at one or more ports in the States or territories of either of the high contracting parties, and then to proceed to complete the said loading or unloading at any other port or ports in the same states or territories.

ARTICLE V.

Neither of the two governments, nor any corporation or agent acting in behalf or under the authority of either Government, shall, in the purchase of any article which, being the growth, produce, or manufacture of the one country, shall be imported into the other, give, directly or indirectly, any priority or preference on account of, or in reference to, the national character of the vessel in which such article shall have been, imported; it being the true intent and meaning of the high contracting parties that no distinction or difference whatever shall be made in this respect.

ARTICLE VI.

Steam vessels of the United States which may be employed by the Government of the said States, in the carrying of their Public Mails across the Pacific Ocean, or from one port in that ocean to another, shall have free access to the ports of the Sandwich Islands, with the privilege of stopping therein to refit, to refresh, to land passengers and their baggage, and for the transaction of any business pertaining to the public Mail service of the United States, and shall be subject in such port to no duties of tonnage, harbor, lighthouses quarantine, or other similar duties of whatever nature or under whatever denomination.

ARTICLE VII.

The whaleships of the United States shall have access to the ports of Hilo, Kealakekua and Hanalei in the Sandwich Islands, for the purposes of refitment and refreshment, as well as to the ports of Honolulu and Lahaina which only are ports of entry for all Merchant vessels, and in all the above named ports, they shall be permitted to trade or barter their supplies or goods, excepting spiritous liquors, to the amount of two hundred dollars *ad valorem* for each vessel, without paying any charge for tonnage or harbor dues of any description, or any duties or imposts whatever upon the goods or articles so traded or bartered. They shall also be permitted, with the like exemption from all charges for tonnage and harbor dues, further to trade or barter, with the same exception as to spiritous liquors, to the additional amount of one thousand dollars *ad valorem*, for each vessel, paying upon the additional goods, and articles, so traded and bartered, no other or higher duties, than are payable on like goods, and articles, when imported in

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the vessels and by the citizens or subjects of the most favored foreign nation. They shall also be permitted to pass from port to port of the Sandwich Islands for the purpose of procuring refreshments, but they shall not discharge their seamen or land their passengers in the said Islands, except at Lahaina and Honolulu, and, in all the ports named in this article, the whaleships of the United States shall enjoy in all respects, whatsoever, all the rights, privileges and immunities, which are enjoyed by, or shall be granted to, the whaleships of the most favored foreign nation. The like privilege of frequenting the three ports of the Sandwich Islands, above named in this Article, not being ports of entry for merchant vessels, is also guaranteed to all the public armed vessels of the United States. But nothing in this article shall be construed as authorizing any vessel of the United States, having on board any disease usually regarded as requiring quarantine, to enter, during the continuance of such disease on board, any port of the Sandwich Islands, other than Lahaina or Honolulu.

ARTICLE VIII.

The high contracting parties engage, in regard to the personal privileges that the citizens of the United States of America shall enjoy in the dominions of his Majesty the King of the Hawaiian or Sandwich Islands and the subjects of his said Majesty in the United States of America, that they shall have free and undoubted right to travel and to reside in the States of the two high contracting parties, subject to the same precautions of police which are practised towards the subjects or citizens of the most favored nations.

They shall be entitled to occupy dwellings and warehouses, and to dispose of their personal property of every kind and description, by sale, gift, exchange, will or in any other way whatever, without the smallest hinderance or obstacle; and their heirs or representatives, being subjects or citizens of the other high contracting party, shall succeed to their personal goods, whether by testament or *ab intestato;* and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at will, paying to the profit of the respective Governments such dues only as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases. And in case of the absence of the heir and representative, such care shall be taken of the said goods as would be taken of the goods of a native of the same country in like case, until the lawful owner may take measures for receiving them. And if a question should arise among several claimants as to which of them said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are.

They shall not be obliged to pay, under any pretence whatever, any taxes or impositions, other or greater than those which are paid, or may hereafter be paid, by the subjects or citizens of the most favored nations, in the respective States of the high contracting parties.

They shall be exempt from all military service, whether by land or by sea; from forced loans, and from every extraordinary contribution not general and by law established. Their dwellings, warehouses, and all premises appertaining thereto, destined for purposes of commerce or residence, shall be respected. No arbitrary search of, or visit to, their houses, and no arbitrary examination or inspection whatever of the books, papers, or accounts of their trade shall be made, but such measures shall be executed only in conformity with the legal sentence of a competent tribunal; and each of the two high contracting parties engages that the citizens or subjects of the other, residing in their respective States, shall enjoy their civil rights, their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation.

ARTICLE IX.

In respect to the right to acquire and hold lands, tenements and real property of every description whatsoever, and to dispose of the same at will, by testament, sale, donation, or otherwise, the citizens & subjects of each of the high contracting parties shall enjoy, respectively in the country of the other, all the rights, privileges and immunities, which shall be enjoyed by or granted to the citizens and

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subjects of the most favored foreign nation; and their heirs and representatives, being subjects or citizens of the other high contracting party, shall succeed to their said real property of every description, whether by testament or *ab intestato:* and may take possession thereof by themselves, or by others acting for them, and hold, or dispose of the same, at will paying, to the profit of the respective governments, such dues only as the inhabitants of the country where the said property is shall be subject to pay in like cases. *Provided* however that nothing in this article shall be so construed or understood, as to contravene or in any way effect the validity of any general provisions in the laws of either country, regulating, restricting or prohibiting the acquisition of such real estate, by aliens, in any other manner than by the right of succession or inheritance herein secured.

ARTICLE X.

The citizens and the subjects of each of the two high contracting parties shall be free in the States of the other to manage their own affairs themselves, or to commit those affairs to the management of any persons whom they may appoint as their broker, factor, or agent; nor shall the citizens and subjects of the two high contracting parties be restrained in their choice of persons to act in such capacities, nor shall they be called upon to pay any salary or remuneration to any person whom they shall not choose to employ.

Absolute freedom shall be given in all cases to the buyer and seller to bargain together, and to fix the price of any goods or merchandise imported into, or to be exported from the States and dominions of the two high contracting parties; save and except generally such cases wherein the laws and usages of the country may require the intervention of any Special agents in the States and dominions of the high contracting parties. But nothing contained in this or any other article of the present Treaty shall be construed to authorise the sale of Spiritous liquors to the natives of the Sandwich Islands farther than such sale may be allowed by the Hawaiian laws.

ARTICLE XI.

Each of the two high contracting parties may have, in the ports of the other, consuls, vice consuls, and commercial agents, of their own appointment, who shall enjoy the same privileges and powers as those of the most favored nations; but if any such consuls shall exercise commerce, they shall be subject to the same laws and usages to which the private individuals of their nation are subject in the same place.

The said consuls, vice consuls, and commercial agents are authorized to require the assistance of the local authorities for the search, arrest, detention, and imprisonment of the deserters from the Ships of war and other vessels of their country. For this purpose, they shall apply to the competent tribunals, judges, and officers, and shall in writing demand the said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews or by other official documents, that such individuals formed part of the crews, and this reclamation being thus substantiated, and the proper and lawful charge for their apprehension being defrayed the surrender shall not be refused.

Such deserters, when arrested, shall be placed at the disposal of the said consuls, vice consuls, or commercial agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessel to which they belonged, or sent back to their own country by a vessel of the same nation or any other vessel whatsoever.

But if not sent back within six months from the day of arrest, or if all the expenses of such imprisonment are not defrayed by the party causing such arrest and imprisonment, they shall be set at liberty, and shall not be again arrested for the same cause.

However, if the deserter should be found to have committed any crime or offence, his surrender may be delayed until the tribunal, before which his case shall be depending, shall have pronounced its sentence, and such sentence shall have been carried into effect.

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ARTICLE XII.

If any ships of war or other vessels be wrecked on the coasts of the States of either of the high contracting parties, such ships or vessels, or any parts thereof, and all furniture and appurtenances belonging thereunto, and all goods and merchandise which shall be saved therefrom, or the produce thereof, if sold, shall be faithfully restored with the least possible delay, to the proprietors, upon being claimed by them, or their duly authorized factors, and if there are no such proprietors or factors on the spot, then the said property, or the proceeds thereof, as well as all the papers found on board such wrecked ships or vessels, shall be delivered to the American or Hawaiian Consul or vice consul in whose district the wreck may have taken place; and such consul, vice consul, proprietors, or factors, shall pay only the expenses incurred in the preservation of the property, together with the rate of salvage, and expenses of quarantine which would have been payable in the like case of a wreck of a national vessel; and all goods and merchandise saved from the wreck shall not be subject to duties, unless destined for consumption, it being understood that in case of any legal claim, upon such wreck, goods or merchandise, the same shall be referred for decision to the competent tribunals of the country.

ARTICLE XIII.

The merchant vessels of each of the two high contracting parties which may be forced by stress of weather or other cause into one of the ports of the other, shall be exempt from all duty of port or navigation paid for the benefit of the State, if the motive which led to take refuge be real and evident, and if no operation of commerce be done by loading or unloading merchandise; well understood, however, that the loading or unloading, which may regard the subsistence of the crew, or be necessary for the reparation of the vessel, shall not be considered operations of commerce, which lead to the payment of duties, and that the said vessels do not stay in port beyond the time necessary, keeping in view the cause which led to taking refuge.

ARTICLE XIV.

It is agreed that perfect and entire liberty of conscience shall be enjoyed by the citizens and subjects of both the contracting parties, in the countries of the one and the other, without their being liable to be disturbed or molested on account of their religious belief. But nothing contained in this article shall be construed to interfere with the exclusive right of the Hawaiian Government to regulate for itself the Schools which it may establish or support within its jurisdiction.

ARTICLE XV.

The present treaty shall be in force from the date of the exchange of the ratifications and for the term of eight years, and further, until the end of twelve months after either of the high contracting parties shall have given notice to the other of its intention to terminate the same, each of the said high contracting parties reserving to itself the right of giving such notice at the end of the said term of eight years or at any subsequent term.

ARTICLE XVI.

The present treaty shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate of the said States, and by his Majesty the King of the Kingdom of the Hawaiian Islands and the ratifications shall be exchanged at Honolulu, at the expiration of ten months, from the date of its signature or sooner if possible

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their seals.

Done in quadruplicate at San Francisco the twenty second day of October, in the year One thousand eight hundred and forty nine.

CHARLES EAMES. [Seal]
GERRIT PARMILE JUDD [Seal]

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The basis of the San Francisco Treaty was, in accord with the instructions to Eames, the treaty with the Two Sicilies of December 1, 1845 (Document 118); of the thirteen articles of that treaty, twelve[1] were taken almost literally (*mutatis mutandis*) into the San Francisco Treaty; provisions in the San Francisco Treaty which (as compared with the treaty with the Two Sicilies) were new were the concluding, most-favored-nation clause of Article 2, the last sentence of Article 10, regarding spirituous liquors, and Articles 6, 7, 9, and 14.

Comparison of texts shows that in many respects the San Francisco Treaty and the final treaty are quite similar; there are differences in the respective preambles and final clauses and also in the articles of duration and ratification (15 and 16 of the San Francisco Treaty; 16 and 17 of the final treaty); the latter portion of Article 4 and also Article 5 of the San Francisco Treaty have no equivalent in the final treaty; the subject of real estate (Article 9 of the San Francisco Treaty) is much more briefly dealt with in one sentence of Article 8 of the final treaty; otherwise, the later agreement has in it everything of substance of the earlier; but the final treaty contains various provisions which are not in the San Francisco Treaty in any form; these are clauses of friendship (Article 1 and the second paragraph of Article 16), one of the passages regarding deserters (antepenultimate sentence of Article 10), extradition clauses (Article 14), and postal clauses (Article 15).

The letter of credence of Eames of February 10, 1849 (D.S., 3 Credences, 261), was forwarded by him from San Francisco to Wyllie with a note of January 1, 1850, was presented to the King and Council on January 24, and was received as if presented by Eames himself (see D.S., 4 Despatches, Hawaii, Wyllie to the Secretary of State and the same to Eames, January 26, 1850).

The Treaty of December 6, 1849

Aside from material obtained in 1935 from the archives of Hawaii, which is later discussed, very little appears in the archives of the Department of State regarding the treaty signed on December 6, 1849 (D.S., Unperfected V8), by Secretary of State Clayton and Commissioner Jarves;[2] the negotiations were wholly verbal; it seems that they could not have commenced until after[3] November 19, for on that day (Monday) Clayton wrote as follows to Jarves at Boston (D.S., 37 Domestic Letters, 363–64):

> I very much regret that owing to the great pressure of business upon this Department, during your recent visit to this City, it was not in my power to see you. Being now, however, somewhat relieved from that pressure, if you will

[1] The exception was Article 11 of the treaty with the Two Sicilies, of special application.

[2] In the report in Foreign Relations, 1894, appendix II, 13, there is no mention of the instrument of December 6, 1849.

[3] Perhaps Jarves reached Washington on November 25; in D.S., 2 Notes from the Hawaiian Legation, are copies of his full power and his commission, each certified by him at Washington on that day, which was Sunday; the earlier visit, when he did not see Clayton, began on November 3; see Library of Congress, 7 Clayton Papers, 1233, Jarves to Clayton of that date.

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repair hither at any time which may suit your convenience, I will be pleased to confer with you upon any matters which you may have occasion to present.

It seems, too, that by the end of the following week the terms had been agreed upon and the instruments were being drawn up for signature, for on December 2 (Sunday) Jarves wrote from Philadelphia to William Hunter, Jr., then Claims Clerk and apparently Acting Chief Clerk of the Department of State, that he "proposed being in Washington to sign the treaties on Monday the 3rd", but that he would not arrive until the evening and accordingly proposed being at the Department for the purpose on the ensuing morning (D.S., 2 Notes from the Hawaiian Legation; see also Jarves to Clayton, December 4, 1849, in Library of Congress, 7 Clayton Papers, 1329).

As has previously been stated, the originals of the San Francisco Treaty signed by Eames on October 22, 1849, reached the Department of State two days after the signature of the treaty of December 6. On the day of their receipt Hunter wrote to Jarves, and, while there is available no record copy of that communication, its tenor sufficiently appears from this answering note of Jarves to Clayton dated at New York December 12 (*ibid.*):

To day, I received a note from Mr Hunter, dated 8th Dec. requesting me not to forward [to the Hawaiian Government] the Treaty singned by us, for the present. I defer doing so, until I see you, which I expect to be able to do the ensuing week. Mr Judd sails for England to day — & has taken with him one of the treaties[1] signed at Washington to the intent of obtaining similar from England & France. Either treaty, would meet the views of the Hawaiian Government, though the one negotiated by Mr Eames, is not considered by either Mr. Judd or myself so satisfactory as the one signed by you. I shall be in Washington as early as possible next week, which I trust will meet your views.

Obviously, it was thought at Washington that the terms of the treaty of December 6 should be somewhat recast in the light of the provisions of the San Francisco Treaty, that neither of those treaties should be deemed definitive, and that they should be replaced by a new agreement comprising to some extent at least the wording of each of the earlier treaties. The result was the final treaty, that of December 20, 1849.

There is certain correspondence other than that already mentioned which is of some relevance both to the treaty of December 6 and to the final treaty of December 20, 1849.

Judd reached New York on December 8, 1849 (Judd, Honolulu Sketches of Life in the Hawaiian Islands, 196). Information of his arrival was given to the Secretary of State by the following letter of Jarves of December 10 (D.S., 2 Notes from the Hawaiian Legation):

I have the honor to inform you of the arrival in this city of Mr. G. P. Judd, Minister of Finance to His Majesty, the King of the Hawaiian Islands, accompanied by the heir apparent and his brother. Mr Judd has been made joint Commissioner & Plenipotentiary with myself to the Governments of the United States, England & France. Finding that I have completed with yourself the negotiation of a Treaty, he proceeds in the Steamer of the 12th inst to Liverpool, to negotiate if possible, similar treaties at London & Paris. Believing that the

[1] Meaning one of the two originals which were for the Hawaiian Government; the treaty of December 6 was signed in triplicate.

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friendly aid & counsel of the Ministers of the United States at London & Paris would be of essential service to our joint mission, I take the liberty to ask of you, letters to those gentlemen. If this be agreeable to you, you will confer an important favor, by enclosing them to me, at Boston.

I shall not proceed[1] to Europe until after the ratification of the Treaty of 6th Dec. by the U.S. Senate, which I trust will meet their approbation

Judd himself wrote to the Secretary of State on December 11 in these terms (*ibid.*):

I have the honor to enclose herewith my letter of Credence [printed above].

A strict conformity with my Instructions would require that I should proceed immediately to Washington, present the letter in person and pay my respects to yourself and to His Excellency the President; indeed I had determined to do so until I learned from Mr. Jarves the particulars of his negociations with you, which rendered my presence at Washington by no means indispensible, and taking into consideration the importance of reaching Paris as early as possible I have arranged with Mr. Jarves that he remain in the U.S. while I proceed to Europe by the Steamer which leaves this city tomorrow.

In relation to the Treaty and all other matters I take the liberty of referring you to Mr Jarves.

Thus Judd did not participate in the negotiations at Washington; he did not arrive at New York until two days after the signature of the treaty of December 6, and he left for England on December 12, 1849.

From the archives of Hawaii there has been obtained a photographic facsimile of a copy of the treaty of December 6; that copy was an enclosure to Jarves's despatch No. 5, of December 27, 1849; it has this endorsement, dated December 13 and signed by Jarves:

Copy of *Treaty*.—

One of the triplicate Originals Judd took with him to Europe—(12 Dec)—another I keep at request of Mr Clayton, note rec'd to day—until we can confer upon the subject of Eames' Treaty with Judd. I shall go to Washington for that purpose in a few days—This contains three important clauses for the Haw. Govt. *not in Judd's—In haste*

The treaty of December 6, 1849, was written in English only and was signed in triplicate. The available copy of the text is somewhat imperfect, showing various errors and omissions of the scrivener. The treaty contains a preamble, twelve articles, and the usual final clauses. Comparison with the final treaty shows that the entire text of the treaty of December 6 was taken over almost literally into the treaty of December 20; the wording of Article 10 of the earlier treaty (Article 13 of the final treaty; cf. Article 10 of the treaty with the Two Sicilies of December 1, 1845, Document 118) was somewhat recast, but otherwise only a few very minor changes of wording were made. The articles of the final treaty which correspond to the twelve articles of the treaty of December 6 are those numbered respectively 1 to 5, inclusive, 8 to 10, inclusive, 12, 13, 16, and 17; but the concluding, most-favored-nation clause of Article 3 of the final treaty and the concluding sentence of Article 9 of that treaty, regarding spirituous liquors, were not in the treaty of December 6.

[1] Jarves remained in the United States and did not join Judd in the mission to Great Britain and France.

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It follows that when the treaty of December 6 was framed, Secretary of State Clayton adopted for his own guidance the instruction of February 16, 1849, written by his predecessor to Eames (printed above); with little change, nearly everything in the treaty of December 6 was taken (*mutatis mutandis*) from the treaty with the Two Sicilies [1] of December 1, 1845 (Document 118), which had been given to Eames as his "general model"; clauses which were new (as compared with the treaty with the Two Sicilies) were Article 1, the concluding words of Article 6 (Article 8 of the final treaty), a sentence of Article 8 ("The agents, owners or masters", etc.; Article 10 of the final treaty), and the final paragraph of Article 11 (Article 16 of the final treaty); and the clause regarding real estate (in Article 6 of the treaty of December 6, as in Article 8 of the final treaty) was copied from the sixth paragraph of Article 7 of the treaty with Hanover of May 20, 1840 (Document 92), also mentioned in the instructions to Eames.

The Final Treaty

The treaty of December 20, 1849, was, as has been seen, based in large part on that signed at Washington two weeks earlier by the same Plenipotentiaries, and to some extent, also, on the San Francisco Treaty of the previous October 22; there is nothing in the archives of the Department of State regarding the concluding discussions between Clayton and Jarves; they could not have begun earlier than December 17 (see the note of Jarves of December 12, 1849, quoted above).

The previous analyses of texts show that the final treaty included all the provisions of the treaty of December 6. To those provisions were added clauses taken from the San Francisco Treaty and written into the final treaty as Articles 6, 7, and 11, the most-favored-nation clause concluding Article 3, and the last sentence of Article 9, regarding spirituous liquors; and there were also added two articles which had not been in any form in either of the earlier instruments; these are the extradition and postal clauses, Articles 14 and 15. The extradition article was patterned after that of the Webster-Ashburton Treaty (Document 99, Article 10).

It may be surmised that a proposal of extradition and postal clauses was put forward by Jarves, for his instructions (cited previously) included this sentence:

> You are to represent that a Postal arrangement to the same effect, with each of the three Nations [United States, Great Britain, and France] would also be advantageous, and likewise some arrangement in regard to refugees from Justice, in compatibility with the respect due to the right of Hawaiian Jurisdiction.

The treaty of December 20, 1849, was, according to the final clause thereof, signed in triplicate. One original of the treaty for the Hawaiian Government was taken by Elisha H. Allen, consul at Honolulu, who left New York on January 17, 1850, and arrived at Hono-

[1] And everything of substance in that treaty with the Two Sicilies except Articles 5 and 11 and the final sentence of Article 4 is in the treaty of December 6.

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lulu on the following March 10 (D.S., 2 Notes from the Hawaiian Legation, Jarves to the Secretary of State, January 17, 1850; Judd, Honolulu Sketches of Life in the Hawaiian Islands, 194).

The Exchange of Ratifications

Charles Bunker was appointed consul at Lahaina (on the island of Maui), some eighty statute miles to the east-southeast of Honolulu (on the island of Oahu), on April 22, 1850. There was at the time no Commissioner of the United States to Hawaii in office; the resignation of Charles Eames had been accepted, and his successor, Luther Severance, was not appointed until June 7, 1850. To Bunker was entrusted the duty of exchanging the ratifications of the treaty at Honolulu; he was furnished with a full power for that purpose dated May 7, 1850 (D.S., 3 Credences, 352); and, pursuant to his instructions of the same date, he took with him the United States instrument of ratification (D.S., 13 Instructions to Consuls, 282–83).

The exchange of ratifications took place at Honolulu on August 24, 1850, between "Robert Crichton Wyllie, Minister of Foreign Relations of His Majesty, the King of the Hawaiian Islands, and Charles Bunker, Consul of the United States for Lahaina". The original and duplicate of the certificate of exchange were transmitted by Bunker respectively with his despatches of August 26 and September 3, 1850, received on the following November 8 and 25 (D.S., 4 Despatches, Hawaii). The proclamation of November 9, 1850, followed the receipt of the original certificate. The triplicate certificate, "sealed up with the Treaty [Hawaiian instrument of ratification] and left in safe deposit at Honolulu", was apparently delivered at the Department with the Hawaiian instrument of ratification, which has a notation to the effect that it was received on March 23, 1855, "from C. Bunker late Consul".

The Project of August 21, 1838

Benjamin Franklin Butler (1795–1858), of New York, at one time a law partner of Martin Van Buren, was Attorney General of the United States from November 15, 1833, to August 31, 1838; from 1838 to 1841 he was United States Attorney for the Southern District of New York; on March 29, 1839, he wrote from New York the following letter to Secretary of State Forsyth (D.S., Miscellaneous Letters, January–April 1839):

> I have the honor to enclose a letter recently received by me, from the Rev. Wm Richards, one of the American Missionaries resident in the Sandwich Islands, written, as you will perceive, at the request of the King of those Islands, & accompanied by the *projet* of a treaty executed by the King & his Secretary, and which he desires to have laid before the President for his consideration.
>
> The letter of Mr Richards sufficiently explains the motives which have led to this communication, & the advantages which will result to American interests, from the conclusion of some such arrangement as that proposed. You will perceive, that a general authority was designed to be given to me in the premises; but for obvious reasons I cannot exercise or accept any such authority, & my interference is only to be regarded as that of an individual, in which character

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alone could I have acted in the matter, had the official connexion which led the parties to address me, continued to exist.

Although the documents do not come through a regular diplomatic channel; yet if the President should think it advisable to enter into a treaty on the terms proposed, or on any others, I take it for granted, that it will be easy to complete the necessary arrangements, through the new consul at Honolulu. This gentleman, I presume, has by this time entered on his duties; & it is doubtless known to you, that he enjoys the confidence of the local authorities.

In support of the suggestions offered by Mr Richards, I will add, that the wonderful advances made by the inhabitants of the Sandwich Islands, within the last twenty years, have, under Providence, been effected by the agency of the American Missions. It seems, therefore, peculiarly proper that the desire of the local government for the cultivation of such relations with the United States, as are just in themselves & agreeable to usage, should be responded to in a liberal spirit. Such a policy, will, I am sure, be very gratifying to that large portion of our people, who have contributed to the missions, & who consider the American name as honorably identified with the civilization of this rising people. Looking to the growing importance of our trade in the Pacific, & to the probable extension of our settlements in the region of the Oregon, & it would appear, that the establishment of such relations with them, as will prevent the valuable harbor of Honolulu from falling into adverse hands, is a matter of great national concern.

The suggestion of Mr R. in regard to the possible desire of one or both of the great powers named in his letter, to possess these Islands, seems to me, also, to be very deserving of consideration.

I need scarcely add, that should it be thought needful by the Department, it will give me great pleasure to be the medium of communication with any of the parties.

The letter enclosed with the foregoing and printed below, while signed by William Richards, is to be deemed an official communication, as "Kamehameha III", appearing at the foot, is the signature of the King. The advance authority contained in it for alterations in the project transmitted is unusual perhaps to the extent of being without precedent (*ibid.*):

LAHAINA ISLAND OF MAUI
Sandwich Islands, August 21st 1838

To the Hon. BENJ. F. BUTLER,
Attorney general of the United States.

HONOURED AND DEAR SIR Though I had the honor of an introduction to you at Albany in Sept. last, and also of addressing you a private letter a few weeks later, yet I can scarcely hope that you recollect me, and should not presume to address you from this distance, were there not in my own mind very important considerations urging me to it, and such considerations too as I can but believe will be satisfactory to yourself. I should however by no means, either address you or even desire to do it, were it not for the confidence I feel in your readiness to promote the interest of other nations as well as our own.

The Sandwich Islands are now becoming of considerable importance in a variety of respects. The principal port, which is at Honolulu, on the island of Oahu, is vastly the best, and may almost be said to be the only Harbor within six or eight thousand miles. The harbors on the western coast of America are generally quite inferior to it, and there are few good harbors found among all the thousands of islands scattered through this vast ocean. These islands have long been of great importance on account of the refreshments they have afforded to the multitud of ships engaged in the whale fishery. I have often seen from two to three millions of America property in that harbor at the same time.

But these Islands are becoming vastly important for other reasons. A large amount of business is now done by vessels running from the western coast of America to China, by way of the Sandwich Islands, and Honolulu is of importance as a place of deposit, as well as for the increasing trade carried on by the people themselves. This nation too is rising in importance. The people are becoming

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in a good degree intelligent. Probably as large a proportion of the inhabitants under thirty years of age are able to read, as among the European nations generally. The resources of the country are now in a progressive state of developement, and will soon be extensive. They even now attract the attention of numerous merchants, and a considerable amount of foreign capital is already invested here.

The people having but just emerged from a state of barbarity, and having acquired but a very limited acquaintance with the laws and usages of nations, and being called to transact business with those who are far superior to themselves in intelligence, (if not in morals,) difficulties often arrise, and in some instances to the exposure of American interests. If a regular treaty could be established between this government and the United States, I can not doubt it would be of material benefit to the interests of American merchants, as well as to the inhabitants of the Sandwich Islands.

In the year 1826, Capt. Jones of the U.S.A. Ship of War Peacock proposed some articles of agreement [Document 54], to which this government assented, but whether those articles were ever noticed by the President is not known, and even if they had been they are not sufficient for the present emergency. Various papers have also been presented to the Sandwich Island government by the American consul, to some of which he has obtained the signature of persons in authority, not by the fairest means. In view of this subject the king has caused a treaty to be drawn up in his own language, of such a character as he desires should be ratified by the President of the United States.

A translation in English signed by his own hand, and also the native copy made by his own private secretary accompanies this letter. At the urgent request of the king I have consented to forward these documents to you, and present his request that you will examine this Treaty, and if in a suitable form and of suitable character to be ratified, that you would present it to the President, and take such measures, as your wisdom shall direct to forward its ratification. But if there is any error in the form, or anything unsuitable in the matter, he further requests that you would have the goodness to make the necessary alterations, and than present it to the President.

I have been the more ready to make this request from an apprehension entertained by many that some of the Governments of Europe may yet seize on these Islands for their own advantage. A formal treaty between this government and the United States, would tend to prevent such an attempt, and thus not only secure in some degree the welfare of this people, but also to prevent future difficulties between the United States and England or Rusia, the nations most likely to take possession of these Islands.

There are some items in the Treaty proposed, not customarily considered as subjects of Treaty, but the peculiar circumstances of the nation will at once be seen to be the reason for introducing them.

Should the Treaty for any reason fail of being ratified, or the subject fail of receiving the attention of government, a *private* letter from yourself either communicated directly or indirectly stating what course it is advisable for the king to pursue in order to secure such objects as he now hopes to secure by the Treaty, would be a favor most highly prized.

Forgive me, Sir, the liberty I have taken in thus addressing you. It is to the spiritual welfare of the Sandwich Islanders that I am devoted; but that can not be promoted in its highest degree, without some regard to the political interests of the nation, which must be my apology for thus addressing you, though at the request of the King.

With the highest respect and esteem, I am, Honored Sir,

Your Obedient Sev^{t},

WILLIAM RICHARDS

By the request of, KAMEHAMEHA III

BENJ. F. BUTLER

Attorney General of the U.S.A.

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The project enclosed with the foregoing letter of Richards is, as therein stated, written in English and Hawaiian; and each version is signed. Only the English version is here printed (*ibid.*):

Treaty of Peace, Amity & Commerce between the United States of America and his Majesty, the King of the Sandwich Islands.

ARTICLE I.

There shall be sincere, firm and perpetual peace and amity between the United States of America and his Majesty, the king of the Sandwich Islands; and between the respective subjects of the two nations.

ART. II.

The inhabitants and citizens of the United States within the territorial jurisdiction of the Sandwich Islands, together with their ships, vessels and all their property of whatever kind it may be, shall enjoy the same inviolable protection against every foreign enemy as is enjoyed by native born citizens.

ART. III.

The contracting parties being desirous to avail themselves of the bounties of divine Providence by promoting the commercial intercourse and friendship subsisting between the respective nations for the better security of these desirable objects, his Majesty and his government agents pledge themselves to receive into their ports and harbors, all ships and vessels of the United States not violating the established laws of the land, and to protect as they do their own property, all such ships and vessels and their cargoes, officers and crews, so long as they behave themselves peacefully: and for the purposes of commerce the citizens of the United States shall be permitted to hire and occupy houses and warehouses in accordance with the laws and customs of the country.

ART. IV.

His majesty and government agents do further agree to extend the fullest protection within their control to all ships and vessels of the United States which may be wrecked on their shores, and to render every assistance in their power to save the wreck and her apparel and her cargo, and as a reward for the assistance and protection which the Sandwich Islands shall afford to all such distressed vessels of the United States they shall be entitled to a salvage, or a portion of the property so saved which proportion shall be fixed by a commission of disinterested persons who shall be chosen equally by the parties

ART. V.

All citizens of the United States having come on shore at the Sandwich Islands in accordance with the regulations of the several ports, shall, whether resident or transient be inviolably protected in all their commercial pursuits and business so long as they conform to the laws of the country, and in their intercourse with each other and with the subjects of his Majesty shall enjoy the same protection of law as is enjoyed by native born citizens. They shall be allowed to sue for and to recover by judgment all claims against each other and against the subjects of his Majesty, according to the strict principles of equity and the acknowledged practice of enlightened nations.

ART. VI.

His Majesty and his government Agents do further agree to discountenance, and to use all practicable means to prevent desertion from all American ships which shall visit the Sandwich Islands, and to this end it shall be the duty of all

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governors, magistrates and chiefs of districts, and all other persons in authority to apprehend all deserters and deliver them over to the master of the vessel from which they have deserted, it being understood that said governor or magistrate may demand of the master aforesaid the sum of six dollars, which sum may be increased according to the distance from the vessel at which said deserter shall be apprehended, but the demand shall never exceed forty dollars.

ART. VII.

Whenever a citizen of the United States shall decease at the Sandwich Islands, his goods, chattles and effects, together with all his personal property of whatever kind it may be shall be delivered into the hands of his lawful heirs or executors if present; but if no heir or executor appear, then the American consul or his agent shall be permitted to act as executor and dispose of said property entirely at his own discretion, paying of course all lawful demands against the estate of said citizen of the United States.

ART. VIII.

No higher or other duties or charges on account of tonage, harbor dues, pilotage or other local charges shall be exacted of any citizen of the United States, than are exacted of the subjects of the most favored nation.

ART. IX.

It shall be free for the United States to appoint consuls for the protection of trade, to reside at the Sandwich Islands, but before any consul shall act as such, he shall in the usual form be admitted and approved by the government; and it is further agreed that in case of illegal or improper conduct towards the laws or legal authorities, his Majesty, together with his government agents, may then refuse to transact business with him, assigning however to the government of the United States, their reasons for the same.

ART. X.

Whereas, there is a considerable number of citizens of the United States now residing at the Sandwich Islands, ocupying building lots and other real estate, but without any written security or title, and without having rendered an equivalent, but have come in possession of said estate, by a mere temporary grant of favor, according to a former usage of the country; for a better understanding of the subject it is hereby agreed, that no citizen of the United States conforming to the laws of the Sandwich Islands shall be dispossessed of any building lot or privilege of soil within a less period than ten years from the time he came in possession, nor shall he then be dispossessed without being paid for all buildings, fixtures and improvements, erected and made at his own expense. And it is further agreed that no citizen of the United States shall be dispossessed of any building lot or estate contrary to the common rules of the country in relation to native born citizens.

ART. XI

Should any of the citizens of the Sandwich Islands or their vessels visit the United States, it is hereby agreed that they shall enjoy the same protection and privileges as are granted by the United States to the subjects of other free & independant nations, and all favors and advantages promised in this treaty to citizens of the United States visiting the Sandwich Islands shall also be granted to the citizens of the Sandwich Islands visiting the United States, according to the principles of strict reciprocity.

ART. XII.

This treaty when ratified by the President and Senate of the United States and the ratification recived by his Majesty, the king of the Sandwich Islands, shall then take effect and shall forthwith be published and shall be in full force

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for the term of fifteen years, and all other treaties, conventions or articles of agreement entered into by the two nations, or by any of the authorities or officers of the two nations are hereby made null and void.

Done at Lahaina on the Island of Maui this Twenty first day of August in the year of our Lord, one thousand, eight hundred and thirty eight.

KAAHUMANU 2 KAMEHAMEHA III

It does not appear from the archives of the Department of State that any attention was paid to the project of August 21, 1838. No mention of the project has been noticed either in the despatches from Honolulu or in the instructions to consuls, and there is not even of record an acknowledgment to either of the writers of the two letters above printed.

RELATIONS WITH HAWAII

The annexation of Hawaii became complete on August 12, 1898, pursuant to the joint resolution of July 7, 1898 (30 Statutes at Large, 750–51). Since June 14, 1900, Hawaii has been a territory of the United States under the act of April 30, 1900 (31 Statutes at Large, 141–62).

Relations with Hawaii prior to annexation, from 1820, are discussed in Moore, Digest, I, 475–520. A convenient summary for the period 1820–93 is in Foreign Relations, 1894, appendix II, 8–28; that volume, on "Affairs in Hawaii", of 1437 pages, comprises various Senate and House documents, with some duplication of papers. The literature on the subject is extensive, as may be seen from the Bemis and Griffin Guide, under "Hawaii"; some of the official correspondence in the archives of the former Kingdom and much of that in the archives of the Department of State has been printed (see under "Printed Sources" in the work last cited); but the papers unpublished are very numerous; a catalogue of the manuscript volumes in the latter archives, with valuable comment, is in Kuykendall, Hawaiian Diplomatic Correspondence in the Department of State.

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Treaty Series No. 308
10 Statutes at Large, 891–99
18 *ibid.*, pt. 2, Public Treaties, 675–83

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EL SALVADOR : JANUARY 2, 1850

Treaty of Amity, Navigation, and Commerce, signed at León, Nicaragua, January 2, 1850. Original in English and Spanish.
Submitted to the Senate March 25, 1850. (Message of March 19, 1850.) Resolution of advice and consent September 24, 1850. Resolution of advice and consent to the exchange of ratifications at any time prior to April 1, 1851, September 27, 1850. Ratified by the United States November 14, 1850. Ratified by El Salvador May 28, 1852 (as to the earlier ratification by El Salvador, see the editorial notes). Ratifications exchanged at San Salvador June 2, 1852. Question of the exchange of ratifications submitted to the Senate August 13, 1852. (Message of August 10, 1852.) Resolution of advice and consent to the exchange of ratifications April 4, 1853. Proclaimed April 18, 1853.

A General Treaty of Amity Navigation and Commerce between the United States of North America and the Republic of San Salvador

The United States of North America and the Republic of San Salvador, desiring to make lasting and firm the friendship and good understanding which happily exists between both nations have resolved to fix in a manner clear distinct and positive the rules which shall in future be religiously observed between each other by means of a treaty or general convention of peace and friendship, commerce and navigation.

For this desirable object the President of the United States of America has conferred full powers upon E. G. Squier. a citizen of

Tratado Jeneral de amistad, navegacion y comercio entre la República de San Salvador y los Estados Unidos de Norte América.

La República de San Salvador y los Estados Unidos de Norte América, deseando hacer firme y duradera la amistad y buena intelijencia que felizmente existen entre ambas naciones, han resuelto fijar de una manera clara, distinta y positiva, las reglas que en lo futuro han de observarse relijiosamente entre una y otra, por medio de un tratado ó convencion jeneral de paz y amistad, comercio y navegacion, para este apetecible objeto el Presidente de la República de San Salvador ha conferido plenos poderes al Señor Licenciado Don Agustin

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the said States and their Chargé d'Affaires to Guatemala, and the President of the Republic of San Salvador has conferred similar and equal powers upon Señor Licenciado Don Augustin Morales, who after having exchanged their said full powers in due form, have agreed to the following articles:—

Morales, y el Presidente de los Estados Unidos de América ha conferido semejantes é iguales poderes á E. Geo. Squier Ciudadano de dichos Estados y su Encargado de Negocios en Guatemala y Centro América, los cuales despues de haber canjeado sus dichos plenos poderes en debida forma, han convenido en los artículos siguientes—

ART. 1st

There shall be a perfect firm and inviolable peace, and sincere friendship between the United States of America and the Republic of San Salvador, in all the extent of their possessions and territories, and between their citizens respectively without distinction of persons or places

ARTÍCULO 1º

Habrá una paz perfecta, firme é inviolable, y amistad sincera entre la República de San Salvador y los Estados Unidos de América, en toda la estension de sus poseciones y territorios, y entre sus Ciudadanos respectivamente, sin distincion de personas y lugares.

ART. 2d

The United States of America and the Republic of San Salvador desiring to live in peace, and harmony with all the nations of the earth, by means of a policy frank and equally friendly with all engage mutually not to grant any particular favor to other nations in respect of commerce and navigation, which shall not immediately become common to the other party who shall enjoy the same freely if the concession was freely made, or on allowing the same compensation if the concession was conditional.

ARTÍCULO 2º

La República de San Salvador y los Estados Unidos de América, deseando vivir en paz y armonía con todas las naciones de la tierra por medio de una política franca é igualmente amistosa con todas, se obligan mutuamente á no otorgar favores particulares á otras naciones con respecto á comercio y navegacion que no se hagan inmediatamente estensivos á la otra parte, quien gozará de los mismos libremente, si la concesion fuese hecha libremente, ú otorgando la misma compensacion si la concecion fuese condicional.

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ART. 3d

The two high contracting parties being likewise desirous of placing the commerce and navigation of their respective countries on the liberal basis of perfect equality and reciprocity, mutually agree that the citizens of each may frequent all the coasts and countries of the other, and reside therein and shall have the power to purchase and hold lands, and all kinds of real estate, and to engage in all kinds of trade, manufactures and mining upon the same terms with the native citizen, and shall enjoy all the priveleges and concessions, in these matters which are or may be made to the citizens of any country, and shall enjoy all the rights, priveleges and exemptions, in navigation commerce and manufactures which native citizens do or shall enjoy, submitting themselves to the laws, decrees, or usages there established to which native citizens are subjected. But it is understood that this article does not include the coasting trade of either country, the regulation of which is reserved by the parties respectively according to their own separate laws.

ARTÍCULO 3º

Las dos altas partes contratantes, deseando tambien establecer el comercio y navegacion de sus respectivos paises sobre las liberales bases de perfecta igualdad y reciprocidad, convienen mutuamente en que los Ciudadanos de cada una podrán frecuentar las costas y territorios de la otra, residir en ellos, emprender cualquiera clase de tráfico y fabricar, esplotar, minar, comprar y poseer tierras, y toda clase de bienes raices, sujetos á los mismos derechos y obligaciones que los naturales del pais, ó bajo los mismos privilejios que fuesen concedidos ò que se concedan á Cualquiera Ciudadano ó Ciudadanos de otras naciones, y gozarán de todos los derechos, privilejios y exenciones con respecto á navegacion, comercio y fábrica de que gozan ó gozaren los Ciudadanos naturales sometiéndose á las leyes, decretos y usos establecidos á que estan sujetos dichos Ciudadanos. Pero debe entenderse que este artículo no comprende el comercio de cabotaje de cada uno de los paises, cuya regulacion queda reservada á las partes respectivamente segun sus leyes propias y peculiares.

ART. 4th

They likewise agree that whatever kind of produce, manufacture, or merchandise, of any foreign country can be from time

ARTÍCULO 4º

Ygualmente conviene una y otra en que cualquiera especie de producciones, manufacturas ó mercaderías estranjeras que pue-

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to time, lawfully imported into the United States in their own vessels, may be also imported in vessels of the Republic of San Salvador, and that no higher or other duties upon the tonnage of the vessel and her cargo shall be levied and collected, whether the importation be made in vessels of the one country or of the other; And, in like manner, that whatever kind of produce, manufactures, or merchandise of any foreign country, can be, from time to time, lawfully imported into the Republic of San Salvador in its own vessels, may be also imported in vessels of the United States: and that no higher or other duties upon the tonnage of the vessel and her cargo shall be levied or collected whether the importation be made in vessels of the one country or the other.

And they further agree that whatever may be lawfully exported or reexported from one country in its own vessels to any foreign country may in like manner be exported or reexported in the vessels of the other country: and the same bounties duties and drawbacks shall be allowed and collected whether such exportation or reexportation be made in vessels of the United States or of the Republic of San Salvador.

dan ser en cualquier tiempo legalmente importadas en la República de San Salvador en sus propios buques, puedan ser tambien importadas en buques de los Estados Unidos, y que no se impondrán ó cobrarán otros ó mas altos derechos sobre las toneladas del buque, ó por su cargamento, sea que la importacion se haga en buques del uno ú del otro pais: y de la misma manera, cualquiera especie de producciones, manufacturas ó mercaderías estranjeras que puedan ser en cualquier tiempo legalmente importadas en los Estados Unidos en sus propios buques, puedan ser tambien importadas en los buques de la República de San Salvador, y que no se impondrán otros ó mas altos derechos sobre las toneladas del buque ó por su cargamento, sea que la importacion se haga en buques del uno ú del otro pais.

Convienen ademas, en que todo lo que pueda ser legalmente esportado ó reesportado de uno de los dos paises en sus propios buques para un pais estranjero pueda de la misma manera ser esportado ó reesportado en los buques del otro: y serán concedidos y cobrados iguales premios, derechos y descuentos, sea que tal esportacion ó reesportacion se haga en los buques de la República de San Salvador, ó en los de los Estados Unidos.

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ART. 5th

No higher or other duties shall be imposed on the importation into the United States of any articles the produce or manufactures of the Republic of San Salvador, and no higher or other duties shall be imposed on the importation into the Republic of San Salvador of any articles the produce or manufactures of the United States, than are or shall be payable on the like articles, being the produce or manufactures of any foreign country; nor shall any higher or other duties or charges be imposed in either of the two countries on the exportation of any articles to the United States or to the Republic of San Salvador, respectively than such as are payable on the exportation of the like articles to any other foreign country: nor shall any prohibition be imposed on the exportation or importation of any articles the produce or manufactures of the United States or of the Republic of San Salvador, to or from the territories of the United States, or to or from the territories of the Republic of San Salvador which shall not equally extend to all other nations.

ARTÍCULO 5º

No se impondrán otros ó mas altos derechos sobre la importacion en la Republica de San Salvador de cualesquiera artículos del producto natural ó manufacturado de los Estados Unidos, y no se impondrán otros ó mas altos derechos sobre la importacion en los Estados Unidos de cualesquiera artículos del producto natural ó manufacturado de la República de San Salvador, que los que se exijan ó exijieren por iguales artículos del producto natural ó manufacturado de cualquiera otro pais estranjero; ni se impondrán otros ó mas altos ó gravámenes en ninguno de los dos paises sobre la esportacion de cualesquiera artículos para la República de San Salvador ó para los Estados Unidos respectivamente que los que deban exijirse por la esportacion de iguales artículos para cualquiera otro pais estranjero, ni se establecerá prohibicion alguna respecto á la importacion ú esportacion de cualesquiera artículos del producto natural ó manufacturado de los territorios de la República de San Salvador para los Estados Unidos, ó de los territorios de los Estados Unidos para los de la República de San Salvador, que no sea igualmente estensiva á las otras naciones.

ART. 6th

In order to prevent the possibility of any misunderstanding, it

ARTÍCULO 6º

A fin de remover la posibilidad de cualquiera mala intelijencia

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is hereby declared that the stipulations contained in the three preceding articles are to their full extent applicable to the vessels of the United States and their cargoes arriving in the ports of San Salvador and reciprocally to the vessels of the said Republic of San Salvador and their cargoes arriving in the ports of the United States, whether they proceed from the ports of the country to which they respectively belong or from the ports of any other foreign country; and in either case no discriminating duty shall be imposed or collected in the ports of either country on said vessels or their cargos whether the same shall be of native or foreign produce or manufacture.

con respecto á los tres artículos anteriores, se declara aquí: que las estipulaciones contenidas en ellos son aplicables en toda su estencion á los buques de San Salvador y sus cargamentos que arriben á los puertos de los Estados Unidos, y recíprocamente á los buques de los Estados Unidos y sus cargamentos que arriben á los Puertos de San Salvador; sea que procedan de los puertos del pais á que ellos pertenezcan respectivamente, ó de los de cualquiera otro pais estranjero, y que en ningun caso se impondrá ó cobrará derecho alguno diferencial en los Puertos de los dos paises sobre los dichos buques ó sus cargamentos, ya sean estos del producto ó manufactura nacional, ó del producto ó manufactura estranjera.

ART 7.th

It is likewise agreed that it shall be wholly free for all merchants, commanders of ships and other citizens of both countries, to manage by themselves or agents, their own business in all the ports and places subject to the jurisdiction of each other as well with respect to the consignments and sale of their goods and merchandise by wholesale or retail as with respect to the loading unloading and sending off their ships: they being in all these cases, to be treated as citizens of the country in which they reside or at least to be placed on an equality with the

ARTÍCULO 7º

Se conviene ademas, que será enteramente libre á los Comerciantes, Capitanes de buques, y otros Ciudadanos de ambos paises manejar á su voluntad sus negocios por sí mismos, ó por medio de sus ajentes, en todos los puertos y lugares sugetos á la jurisdiccion del uno ú del otro, tanto con respecto á las consignaciones y ventas por mayor ó menor de sus efectos y mercaderías, como con respecto á la carga, descarga y despacho de sus buques ú otros negocios, debiendo en todos estos casos ser tratados como Ciudadanos del pais en que residan, ó con-

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subjects or citizens of the most favored nation.

ART. 8th

The citizens of neither of the contracting parties shall be liable to any embargo, nor be detained with their vessels, cargoes, merchandise or effects for any military expedition, nor for any public or private purpose whatever without allowing to those interested an equitable and sufficient indemnification.

ART. 9th

Whenever the citizens of either of the contracting parties shall be forced to seek refuge or asylum in the rivers, bays, ports or dominions of the other, with their vessels whether merchant or war, public or private through stress of weather, pursuit of pirates or enemies, or want of provisions or water they shall be received and treated with humanity giving to them all favor and protection for repairing their ships, procuring provisions and placing themselves in a situation to continue their voyage without obstacle or hindrance of any kind.

ART 10th

All the ships, merchandise and effects belonging to the citizens of one of the contracting parties, which may be captured by pirates,

siderados al ménos bajo igual pié que los súbditos ó Ciudadanos de la Nacion mas favorecida.

ARTÍCULO 8º

Los Ciudadanos de una y otra de las partes contratantes no podrán ser embargados ó detenidos con sus embarcaciones, tripulaciones, mercaderías y efectos comerciales de su pertenencia, para ninguna espedicion militar, ni para usos públicos ó particulares, cualesquiera que sean, sin conceder á los interesados una justa y suficiente indemnizacion.

ARTÍCULO 9º

Siempre que los Ciudadanos de alguna de las partes contratantes se vieren precisados á buscar refujio ú asilo en los ríos, bahías, puertos ó dominios de la otra, con sus buques, sean mercantes ó de guerra, públicos ó particulares, por mal tiempo, persecucion de piratas ó enemigos ó falta de aguada ó provisiones, serán recibidos y tratados con humanidad, dispensándoles todo favor, y proteccion para reparar sus buques, acopiar víveres, y ponerse en situacion de continuar su viaje, sin obstáculo ni molestia de ningun género.

ARTÍCULO 10º

Todos los buques, mercaderías y efectos pertenecientes á los Ciudadanos de la una de las partes contratantes, que acaso fueren

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whether within the limits of its jurisdiction or on the high seas, and may be carried or found in the rivers, roads, bays, ports or dominions of the other, shall be delivered up to the owners they proving in due and proper form their rights before the competent tribunals: it being well understood that the claim shall be made within the term of one year, by the parties themselves their attorneys or agents of their respective governments.

ART. 11th

When any vessels belonging to the citizens of either of the contracting parties shall be wrecked or foundered, or shall suffer any damage on the coasts or within the dominions of the other there shall be given to them all assistance and protection in the same manner which is usual and customary with the vessels of the nation where the damage happens: permitting them to unload the said vessel, if necessary of its merchandise and effects, without exacting for it any duty, impost or contribution whatever unless they may be destined for consumption or sale in the country of the port where they may have been disembarked.

ART. 12th

The citizens of each of the contracting parties shall have

apresados por piratas, bien sea dentro de los límites de su jurisdiccion ó en alta mar, y fueren llevados ó hallados en los ríos, radas, bahías, puertos ó dominios de la otra, serán entregados á sus dueños, probando estos en la forma propia y debida sus derechos ante los Tribunales competentes: bien entendido que el reclamo ha de hacerse dentro del término de un año por las mismas partes ó por sus procuradores, ó por los ajentes de sus respectivos gobiernos.

ARTÍCULO 11º

Cuando algun buque perteneciente á los Ciudadanos de cualquiera de las partes contratantes naufrague, encalle, ó sufra alguna avería en las costas ó dentro de los dominios de la otra, se le dará toda ayuda y proteccion; del propio modo que es uso y costumbre con los buques de la nacion en donde suceda la avería; permitiéndose descargar el dicho buque si fuere necesario, de sus mercaderías y efectos, sin exijir por esto ningun derecho, impuesto ó contribucion de ninguna especie, á no ser que se destinen á la venta ó consumo en el pais en cuyo puerto se hubieren desembarcado.

ARTÍCULO 12º

Los Ciudadanos de cada una de las partes contratantes ten-

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power to dispose of their personal goods or real estate within the jurisdiction of the other by sale, donation, testament, or otherwise; and their representatives being citizens of the other party, shall succeed to their said personal goods or real estate, whether by testament or ab intestato, and they may take possession thereof, either by themselves or others acting for them and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein said goods are shall be subject to pay in like cases.

drán facultad para disponer de sus bienes muebles é inmuebles dentro de la jurisdiccion de la otra por venta, donacion, testamento, ó de otro modo; y sus representantes siendo Ciudadanos de la otra parte, sucederán á sus dichos bienes muebles é inmuebles sea por testamento ab intestato, y podrán tomar posecion de ellos, por sí personalmente, ó por medio de otros que procedan en su nombre, y disponer de los mismos á su arbitrio, pagando solo aquellas cargas que en iguales casos estuvieren obligados á pagar los habitantes del pais en donde esten los referidos bienes.

ART. 13th

Both contracting parties promise and engage formally to give their special protection to the persons and property of the citizens of each other of all occupations who may be in the territories subject to the jurisdiction of one or the other transient or dwelling therein, leaving open and free to them the tribunals of justice for their judicial recourse on the same terms which are usual and customary with the natives or citizens of the country, for which purpose they may either appear in proper person, or employ in the prosecution or defence of their rights such advocates, solicitors, notaries agents and factors as they may judge proper in all their trials at law, and such

ARTÍCULO 13º

Ambas partes contratantes se comprometen y obligan en toda forma á dispensar recíprocamente su proteccion especial á las personas y propiedades de los Ciudadanos de cada una de ellas, de todas profesiones, transeuntes ó habitantes en los territorios sujetos á la jurisdiccion de una y otra, dejándoles abiertos y libres los Tribunales de justicia para sus recursos judiciales en los mismos términos usados y acostumbrados para los naturales ó Ciudadanos del pais; para lo cual podrán jestionar en persona, ó emplear en la jestion ó defenza de sus derechos los abogados, procuradores, escribanos, ajentes ú apoderados que juzguen convenientes para todos sus litijios,

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citizens or agents shall have free opportunity to be present at the decisions or sentences of the tribunals in all cases which may concern them and shall enjoy in such cases all the rights and priveleges accorded to the native citizen.

ART. 14th

The citizens of the United States residing in the territories of the Republic of San Salvador shall enjoy the most perfect and entire security of conscience without being annoyed, prevented or disturbed, on the proper exercise of their religion in private houses, or on the chapels or places of worship appointed for that purpose provided that in so doing they observe the decorum due to divine worship, and the respect due to the laws usages and customs of the country. Liberty shall also be granted to bury the citizens of the United States who may die in the territories of the Republic of San Salvador in convenient and adequate places, to be appointed and established for that purpose with the knowledge of the local authorities, or in such other places of sepulture as may be chosen by the friends of the deceased nor shall the funerals or sepulchres of the dead be disturbed in any wise, nor upon any account.

In like manner the citizens of San Salvador shall enjoy within

y dhos. Ciudadanos ó Agentes tendrán la libre facultad de estar presentes en las deciciones y sentencias de los Tribunales en todos los casos que les conciernan, y gozarán de todos los privilejios y derechos concedidos á los Ciudadanos naturales.

ARTÍCULO 14º

Los Ciudadanos de la República de San Salvador residentes en territorios de los Estados Unidos, gozarán una perfecta é ilimitada libertad de conciencia, sin ser molestados, inquietados ni perturbados por su creencia relijiosa. No serán molestados, inquietados ni perturbados en el ejercicio de su relijion, en cosas privadas ó en las capillas ó lugares de adoracion designados al efecto, con el decoro debido á la divinidad, y respeto á las leyes, usos y costumbres del pais. Tambien tendrán libertad para enterrar los Ciudadanos de San Salvador que mueran en territorio de los Estados Unidos, en los lugares convenientes y adecuados, designados y establecidos por ellos con acuerdo de las autoridades locales, ó en los lugares de sepultura que elijan los amigos de los muertos; y los funerales y sepulcros no serán trastornados de modo alguno ni por ningun motivo.

De la misma manera, los Ciudadanos de los Estados Unidos

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the government and territories of the United States a perfect and unrestrained liberty of conscience and of exercising their religion, publicly or privately, wtihin their own dwelling houses or on the chapels and places of worship appointed for that purpose, agreeably to the laws usages and customs of the United States.

gozarán en territorio de la República del Salvador perfecta é ilimitada libertad de conciencia, y ejercerán publica ó privadamente en sus mismas habitaciones, ó en las Capillas ó lugares de adoracion designados al efecto, de conformidad con las leyes usos y costumbres de la República de San Salvador.

ART. 15th

It shall be lawful for the citizens of the United States of America and of the Republic of San Salvador to sail with their ships with all manner of liberty and security no distinction being made who are the proprietors of the merchandise laden thereon, from any port to the places of those who now are or shall be at enmity with either of the contracting parties. It shall likewise be lawful for the citizens aforesaid to sail with the ships and merchandise before mentioned, and to trade with the same liberty and security from the places ports and havens of those who are the enemies of both or either party without any opposition or disturbance whatsoever, not only from the places of the enemy before mentioned to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy whether they be under the jurisdiction of one power or under

ARTÍCULO 15º

Será lícito á los Ciudadanos de la República de San Salvador y de los Estados Unidos de América navegar en sus buques con toda seguridad y libertad de cualquier puerto á las plazas y lugares de los que son ó fueren en adelante enemigos de cualquiera de las dos partes contratantes, sin hacerse distincion de quienes son los dueños de las mercaderías que llevan á su bordo. Será igualmente lícito á los referidos Ciudadanos, navegar con sus buques y mercaderías mencionadas, y traficar con la misma libertad y seguridad, de los lugares, puertos y ensenadas de los enemigos de ámbas partes ó de alguna de ellas, sin oposicion ó molestia de ninguna especie, no solo directamente de los lugares enemigos arriba mencionados á los lugares neutros,[1] sino tambien de un lugar perteneciente á un enemigo á otro enemigo, ya sea que estén bajo la jurisdiccion de una sola potencia ó bajo la de diversas.

[1] Written *nuestros;* but record of the error was made when the ratifications were exchanged; see the editorial notes on this point.

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several. And it is hereby stipulated that free ships shall also give freedom to goods, and that everything which shall be found on board the ships belonging to the citizens of either of the contracting parties shall be deemed to be free and exempt although the whole lading or any part thereof should appertain to the enemies of either (contraband goods being always excepted)

It is also agreed in like manner, that the same liberty shall be extended to persons who are on board a free ship with this effect, that altho they be enemies to both or either party, they are not to be taken out of that free ship unless they are officers and soldiers, and in the actual service of the enemies: provided however, and it is hereby agreed, that, the stipulations in this article contained, declaring that the flag shall cover the property shall be understood as applying to those powers only who recognise this principle; but if either of the two contracting parties shall be at war with a third, and the other remains neutral the flag of the neutral shall cover the property of enemies whose governments acknowledge this principle and not of others.

Y queda aquí estipulado que los buques libres hacen libres tambien á las mercaderías, y que se ha de considerar libre y exento todo lo que se hallare á bordo de los buques pertenecientes á los Ciudadanos de cualquiera de las partes contratantes, aunque toda la carga ó parte de ella pertenezca á enemigos de una ú otra, eceptuándose siempre los artículos de contrabando. Se conviene tambien del mismo modo, en que la misma libertad sea estensiva á las personas que se encuentren á bordo de buques libres, con el fin de que aunque dichas personas sean enemigas de ambas partes ó de alguna de ellas, no deban ser estraidas de los dichos buques libres, á menos que sean oficiales ó soldados en actual servicio de los enemigos: á condicion no obstante, como espresamente se conviene, que las estipulaciones contenidas en el presente artículo, por las que se declara que el pabellon cubre la propiedad, se entenderán aplicables solamente á aquellas potencias que reconozcan este principio; pero si alguna de las dos partes contratantes estuviere en guerra con una tercera, y la otra permaneciese neutral, la bandera de la neutral cubrirá la propiedad de los enemigos, cuyos gobiernos reconozcan este principio, y no de otros.

ART. 16.th

It is likewise agreed that in the case where the neutral flag of one

ARTÍCULO 16º

Se conviene igualmente, que en el caso de que la bandera neutral,

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of the contracting parties shall protect the property of one of the enemies of the other by virtue of the above stipulation it shall always be understood that the neutral property found on board such enemys vessels shall be held and considered as enemy's property and as such shall be liable to detention and confiscation, except such property as was put on board such vessel before the declaration of war or even afterwards if it were done without the knowledge of it: but the contracting parties agree that two months having elapsed after the declaration of war, their citizens shall not plead ignorance thereof.

On the contrary, if the flag of the neutral does not protect the enemy's property, in that case the goods and merchandise of the neutral embarked on such enemy's ships shall be free.

de una de las partes contratantes proteja las propiedades de los enemigos de la otra, en virtud de lo estipulado arriba, deberá siempre entenderse que las propiedades neutrales encontradas á bordo de tales buques enemigos, han de tenerse y considerarse como propiedades enemigas, y como tales estarán sujetas á detencion y confiscacion, eceptuando aquellas propiedades que hubiesen sido puestas á bordo de tales buques ántes de la declaratoria de la guerra, y aun despues, si hubiesen sido embarcadas en dichos buques sin tener noticia de ella; pero las partes contratantes convienen en que, pasados dos meses despues de la declaratoria de la guerra, sus respectivos Ciudadanos no podrán alegar que la ignoraban. Por el contrario, si la bandera neutral no protejiere las propiedades enemigas, entónces serán libres los efectos y mercaderías de la parte neutral embarcadas en buques enemigos.

ART. 17th

This liberty of navigation and commerce shall extend to all kinds of merchandise excepting those only which are distinguished by the name of "contraband, and under this name of contraband, or prohibited goods shall be comprehended

1st Cannons, mortars, howitzers, swivels, blunderbusses, muskets, rifles, carbines, pistols pikes

ARTÍCULO 17º

Esta libertad de navegacion y comercio se estenderá á todo jénero de mercaderías, eceptuando únicamente aquellas que se distinguen con el nombre de contrabando, y bajo este nombre de contrabando, ú efectos prohibidos, se comprenderán:

1º Cañones, morteros, obuces pedreros, trabucos, fusiles, rifles, carabinas, pistolas, picas, espadas,

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swords, sabres, lances, spears, halberts, hand grenades bombs, powder, matches, balls, and all other things belonging to the use of these arms.

2ª Bucklers, helmets, breastplates, coats of mail, infantry belts, and clothes made up in the form, and for the military use.

3ª Cavalry belts, and horses with their furniture

4th And generally all kinds of arms and instruments of iron, steel, brass, and copper, or of any other materials manufactured, prepared and formed expressly to make war by sea or land,

5th Provisions that are imported into a besieged or blockaded place.

ART. 18.th

All other merchandise, and things not comprehended in the articles of contraband, explicitly enumerated and classified as above shall be held and considered as free and subjects of free and lawful commerce, so that they may be carried and transported in the freest manner by the citizens of both the contracting parties, even to places belonging to an enemy excepting those places only which are at that time besieged or blockaded; and to avoid all doubt in this particular, it is declared that those places only are besieged or blockaded which are actually attacked by a belligerent force

sables lanzas, chuzos, alabardas y granadas bombas, pólvora, mechas, balas, con todas las demas cosas correspondientes al uso de estas armas.

2º Escudos, casquetes, corazas, cotas de malla, fornituras y vestidos hechos en forma y á usanza militar.

3º Bandoleras y caballos con sus harneses.

4º Ygualmente toda especie de armas é instrumentos de hierro, acero, bronce, cobre y otras materias cualesquiera manufacturadas, preparadas y formadas espresamente para hacer la guerra por mar ó por tierra.

5º Los víveres que se introducen á una plaza sitiada ó bloqueada.

ARTÍCULO 18.

Todas las demas mercaderías y efectos no comprendidos en los artículos de contrabando esplícitamente enumerados y clasificados en el artículo anterior, serán tenidos y reputados como libres y de lícito y legítimo comercio, de modo que podrán ser conducidos y trasportados de la manera mas franca, por los Ciudadanos de ambas partes contratantes, aun á los lugares pertenecientes á enemigo, eceptuando solo aquellas plazas que se hallen actualmente sitiadas ó bloqueadas; y para evitar en el particular toda duda, se declaran sitiadas ó bloqueadas solamente aquellas pla-

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capable of preventing the entry of the neutral.

ART. 19th

The articles of contraband before enumerated and classified, which may be found in a vessel bound for an enemy's port, shall be subject to detention and confiscation leaving free the rest of the cargo and the ship, that the owners may dispose of them as they see proper. No vessel of either of the two nations shall be detained on the high seas on account of having on board articles of contraband whenever the master captain or supercargo of said vessels will deliver up the articles of contraband to the captor, unless the quantity of such articles be so great and of so large a bulk they cannot be received on board the capturing ship without great inconvenience; but in this and all other cases of just detention the vessel detained shall be sent to the nearest convenient and safe port for trial and judgement according to law.

ART 20th

And whereas it frequently happens that vessels sail for a port or place belonging to an enemy without knowing that the same is besieged or blockaded or invested,

zas que en la actualidad estuvieren atacadas por una fuerza de un belijerante capaz de impedir la entrada del neutral.

ARTÍCULO 19º

Los artículos de contrabando ántes enumerados y clasificados que se hallen en un buque destinado á puerto enemigo, estarán sujetos á detencion y confiscacion dejando libre el resto del cargamento, y el buque para que los dueños puedan disponer de ellos como lo tengan por conveniente. Ningun buque de cualquiera de las dos Naciones será detenido en alta mar, por tener á su bordo artículos de contrabando, siempre que el maestre, capitan ó sobre cargo de dicho buque quiera entregar los artículos de contrabando al apresador, á ménos que la cantidad de dichos artículos sea tan grande y de tanto volúmen que no puedan ser recibidos á bordo del buque apresador sin graves inconvenientes; pero en este y en todos los demas casos de justa detencion, el buque Detenido será enviado al Puerto mas inmediato, cómodo y seguro, para que allí se siga el juicio, y se dicte sentencia conforme á las leyes.

ARTÍCULO 20º

Y por cuanto frecuentemente sucede que los buques navegan para un puerto ó lugar perteneciente á un enemigo, sin saber que se halle sitiado, bloqueado ó

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it is agreed that every vessel so circumstanced may be turned away from such port or place but shall not be detained nor shall any part of her cargo if not contraband, be confiscated unless after warning of such blockade or investment from the commanding officer of the blockading forces she shall again attempt to enter; but she shall be permitted to go to any other port or place she shall think proper. Nor shall any vessel that may have entered into such port before the same was actually besieged, blockaded or invested by the other, be restrained from quitting that place with her cargo; nor if found therein after the reduction and surrender shall such vessel or her cargo be liable to confiscation but they shall be restored to the owners thereof.

embestido, se conviene en que á todo buque en tales circunstancias se le pueda hacer retroceder de dicho puerto ó lugar; pero no será detenido ni confiscada parte alguna de su cargamento, no siendo contrabando; á ménos que despues de la intimacion de semejante bloqueo ó embestimiento por el Comandante de las fuerzas bloqueadoras, intentare otra vez entrar; pero le será permitido ir á cualquiera otro Puerto ó lugar á donde lo tuviere por conveniente. Ni á buque alguno que hubiere entrado en un puerto ántes de que estuviere sitiado, bloqueado ú embestido se le impedirá salir de él con su cargamento; ni siendo hallado allí despues de la rendicion y entrega del lugar, estarán sujetos á confiscacion de tal buque ó su cargamento, sino que serán restituidos á sus dueños.

ART. 21st

In order to prevent all kind of disorder in the visiting and examination of the ships and cargoes of both the contracting parties on the high seas, they have agreed mutually that whenever a national vessel of war, public or private shall meet with a neutral of the other contracting party the first shall remain out of cannon shot unless in stress of weather, and may send its boat with two or three men only, in order to

ARTÍCULO 21.

Con el objeto de prevenir todo jénero de desórden en la visita y reconocimiento de los buques y cargamentos de ambas partes contratantes en alta mar, han convenido mutuamente, que siempre que un buque nacional de guerra[1] se encontrare con un neutral de la otra parte contratante, el primero permanecerá fuera del tiro de cañon salvo en caso de mala mar, y podrá enviar su bote con dos ó tres hombres

[1] To correspond with the English version, the words *público ó particular* should follow *guerra;* record of the omission was made when the ratifications were exchanged; see the editorial notes on this point.

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execute the said examination of the papers concerning the ownership and cargo of the vessel, without causing the least extortion, violence or ill treatment, for which the commanders of said armed ships, shall be responsible with their persons and property; for which purpose the commanders of private armed vessels shall, before receiving their commissions give sufficient security to answer for all the damage they may commit. And it is expressly agreed that the neutral party shall in no case be required to go on board the examining vessel for the purpose of exhibiting her papers or for any other purpose whatever.

ART. 22d

To avoid all kinds of vexation and abuse in the examination of the papers relating to the ownership of the vessels belonging to the citizins of the two contracting parties, they have agreed, and do hereby agree, that in case one of them should be engaged in war the ships and vessels belonging to the citizens of the other, must be furnished with sea letters or passports expressing the name property and bulk of the ship as also the name and place of habitation of the master and commander of the said vessel in order that it may thereby appear, that the ship really and

solamente para verificar el dicho reconocimiento de los papeles concernientes á la propiedad y carga del buque, sin ocasionarle la menor estorcion, violencia ó maltrato; sobre lo cual serán responsables con sus personas y bienes los Comandantes del dicho buque armado. Para este fin los Comandantes de buques armados por cuenta de particulares, estarán obligados ántes de recibir sus patentes á dar fianza suficiente para responder de los perjuicios que puedan causar. Y se ha convenido espresamente que en ningun caso se exijirá de la parte neutral que vaya á bordo del buque reconocedor con el fin de exhibir sus papeles, ó para cualquiera otro objeto.

ARTÍCULO 22º

Para evitar toda clase de bejámen y abuso en el escrutinio de los papeles relativos á la propiedad de los buques pertenecientes á los Ciudadanos de las dos partes contratantes, éstas han convenido y convienen, que en caso de que una de ellas estuviere en guerra, los buques y bajeles pertenecientes á los Ciudadanos de la otra, deberán proveerse con patentes de navegacion, ó pasaportes en que se espresen el nombre, propiedad y capacidad del buque, como tambien el nombre y el lugar de la residencia del Maestre ó Comandante, á fin de que se vea que el buque

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truly belongs to the citizens of one the parties, they have likewise agreed that when such ships have a cargo they shall also be provided besides the said sea letters or passports with certificates containing the several particulars of the cargo and the place whence the ship sailed so that it may be known whether any forbidden or contraband goods are on board the same: which certificates shall be made out by the officers of the place whence the ship sailed in the accustomed form; without which requisites said vessel may be detained to be adjudged by the competent tribunal and may be declared lawful prize unless the said defect shall be proved to be owing to accident and shall be satisfied or supplied by testamony entirely equivalent.

pertenece real y verdaderamente á los Ciudadanos de una de las partes: y han convenido igualmente que entando cargados los espresados buques, ademas de las patentes de vavegacion ó pasaportes, irán tambien provistos de certificados, que contengan los pormenores del cargamento, y el lugar de donde se hizo á la vela el buque, para que así pueda saberse si hay á su bordo algunos efectos prohibidos ó de contrabando cuyos certificados espedidos en la forma acostumbrada por los empleados del lugar de la procedencia del buque, sin cuyos requisitos el dicho buque podrá ser detenido para que se les juzgue por el tribunal competente, y podrá ser declarado buena presa á ménos que se pruebe que el defecto proviene de algun accidente y se satisfague ó subsane con testimonio del todo equivalente.

ART. 23d

It is further agreed, that the stipulations above expressed relative to the visiting and examination of vessels shall apply only to those which sail without convoy; and when said vessels shall be under convoy the verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag he carries and when they may be bound to an enemy's port, that

ARTÍCULO 23

Se ha convenido ademas, que las estipulaciones anteriores relativas al reconocimiento, y visita de los buques, se aplicarán únicamente á los que naveguen sin convoy, será suficiente la declaratoria verbal del Comandante de éste bajo su palabra de honor, de que los buques que se hallan bajo su proteccion pertenecen á la nacion cuya bandera llevan, y cuando se dirijan á un puerto enemigo, que los dichos buques

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they have no contraband goods on board, shall be sufficient.

ART 24th.

It is further agreed that in all cases the established courts for prize causes, in the country to which the prizes may be conducted shall alone take cognizance of them. And whenever such tribunals of either party shall pronounce judgement against any vessel or goods or property claimed by the citizens of the other party, the sentence or decree shall mention the reasons or motives upon which the same shall have been founded, and an authenticated copy of the sentence or decree and of all the proceedings in the case, shall, if demanded be delivered to the commander or agent of said vessel without any delay he paying the legal fees for the same.

ART 25th

For the purpose of lessening the evils of war the two high contracting parties further agree that in case a war should unfortunately take place between them hostilities shall only be carried on by persons duly commissioned by the government and by those under their orders, except in repelling an attack or invasion and in the defence of property.

no tienen á su bordo artículos de contrabando.

ARTÍCULO 24º

Se ha convenido ademas, que en todos los casos que ocurran, solo los tribunales establecidos para causas de presas en el pais á que las presas sean conducidas, tomarán conocimiento de ellas. Y siempre que tales tribunales de una de las partes pronunciaren sentencia contra algun buque, ó efectos ó propiedad reclamada por los Ciudadanos de la otra, la sentencia ó decreto hará mencion de las razones ó motivos en que aquella se hubiese fundado, y se franqueará sin retardo alguno al Comandante ó Ajente de dicho buque, si lo solicitare, un testimonio auténtico de la sentencia ó decreto ó de todo el proceso, satisfaciendo por él los derechos legales.

ARTÍCULO 25º

Con el fin de disminuir los males de la guerra las dos altas partes contratantes convienen ademas: que en caso de suscitarse desgraciadamente una guerra entre ellas solo se llevarán á efecto las hostilidades por aquellas personas debidamente autorizadas por el Gobierno, y por las que esten bajo sus órdenes, exeptuándose los casos de repeler un ataque, ó invasion, y en la defenza de la propiedad.

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ART 26th

Whenever one of the contracting parties shall be engaged in war with another State no citizen of the other contracting party shall accept a commission or letter of marque for the purpose of assisting or co-operating hostilely with the said enemy against the said parties so at war under the pain of being treated as a pirate.

ARTÍCULO 26º

Siempre que una de las partes contratantes estuviere empeñada en guerra, con otro Estado, ningun Ciudadano de la otra parte contratante aceptará comision ó patente de corzo para el objeto de auxiliar, ó cooperar hostilmente con el dicho enemigo contra la mencionada parte que esté en guerra, bajo la pena de ser tratado como pirata.

ART 27th

If by any fatality, which cannot be expected and God forbid—the two contracting parties should be engaged in a war with each other, they have agreed, and do agree, now for then, that there shall be allowed the term of six months to the merchants residing on the coasts and in the ports of each other, and the term of one year to those who dwell in the interior to arrange their business and transport their effects wherever they please, giving to them the safe conduct necessary for it, which may serve as a sufficient protection until they arrive at the designated port. The citizens of all other occupations who may be established in the territories or dominions of the United States or of San Salvador shall be respected and maintained in the full enjoyment of their personal liberty and property unless their particular conduct shall cause them to forfeit this protection, which, in

ARTÍCULO 27

Si por alguna fatalidad que no puede esperarse, y que Dios no permita las dos partes contratantes se viesen empeñadas en guerra una con otra, han convenido y convienen desde ahora para entónces, que se concederá el término de seis meses á los comerciantes residentes en las costas y en los puertos de entre-ámbas, y el término de un año á los que habitan en el interior, para arreglar sus negocios y trasportar sus efectos á donde quieran, dandoles el salvo conducto necesario que le sirva de suficiente proteccion hasta que lleguen al puerto designado. Los Ciudadanos dedicados á cualesquiera otras ocupaciones, que se hallaren establecidos en los territorios ó dominios del Salvador ó de los Estados Unidos, serán respetados y mantenidos en el pleno goce de su libertad personal, y de sus propiedades, á ménos que su particular con-

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consideration of humanity the contracting parties engage to give them.

ART 28th

Neither the debts due from individuals of the one nation to the individuals of the other, nor shares nor money which they may have in public funds nor in public or private banks, shall ever, in any event of war or of national difference be sequestered or confiscated.

ART. 29th

Both the contracting parties being desirous of avoiding all inequality in relation to their public communications and official intercourse have agreed and do agree, to grant to the envoys ministers, and other public agents, the same favors, immunities, and exemptions which those of the most favored nations do or shall enjoy; it being understood that whatever favors, immunities, or priveleges the United States of America or the Republic of San Salvador may find it proper to give to the ministers and public agents of any other power, shall, by the same act, be extended to those of each of the contracting parties.

ducta les haga desmerecer esta proteccion, que las partes contratantes se comprometen á prestarles por consideraciones de humanidad.

ARTÍCULO 28

Ni las deudas contraidas por los individuos de la una nacion en favor de los individuos de la otra, ni las acciones que puedan tener en los fondos públicos, ó en los bancos públicos ó particulares, serán jamas secuestradas ó confiscadas en ningun caso de guerra ó desavenencia nacional.

ARTÍCULO 29º

Deseando ámbas partes contratantes evitar toda desigualdad en lo relativo á sus comunicaciones públicas y su correspondencia oficial, han convenido y convienen en conceder á sus Enviados, Ministros y Ajentes públicos, los mismos favores, inmunidades y exenciones que gozan ó gozaren los de las naciones mas favorecidas; bien entendido que cualesquiera favores, inmunidades ó privilejios que el Salvador ó los Estados Unidos tengan por conveniente otorgar á los enviados, Ministros y Ajentes diplomáticos de otras potencias, se harán por el mismo hecho estensivos á los de una y otra de las partes contratantes.

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ART 30th

To make more effectual the protection which the United States and the Republic of San Salvador shall afford in future to the navigation and commerce of the citizens of each other, they agree to receive and to admit consuls and vice consuls in all the ports open to foreign commerce, who shall enjoy in them all the rights, prerogatives and immunities of the consuls and vice consuls of the most favored nation; each contracting party however remaining at liberty to except those ports and places in which the admission and residence of such consuls may not seem convenient.

ART 31st

In order that the consuls and vice consuls of the two contracting parties, may enjoy the rights prerogatives and immunities which belong to them by their public character, they shall, before entering on the exercise of their functions, exhibit their commission or patent, in due form, to the government to which they are accredited; and having obtained their Exequatur, they shall be held and considered as such by all the authorities, magistrates and inhabitants, in the consular district in which they reside.

ARTÍCULO 30º

Para hacer mas efectiva la proteccion que el Salvador y los Estados Unidos de América dispensarán en adelante á la navegacion y comercio de los Ciudadanos de una y otra, convienen en recibir y admitir cónsules y Vice-cónsules en todos los puertos abiertos al comercio estranjero, quienes gozarán en ellos de todos los derechos, prerogativas é inmunidades de los Cónsules y Vice-cónsules de la nacion mas favorecida, quedando no obstante en libertad cada una de las partes contratantes para eceptuar aquellos puertos y lugares en que la admision y residencia de tales Cónsules pueda no parecer conveniente.

ARTÍCULO 31.

Para que los Cónsules y Vice Cónsules de las dos partes contratantes puedan gozar de los derechos, prerogativas é inmunidades que les corresponden por su carácter público, ántes de entrar en el ejercicio de sus funciones, presentarán su comision ó patente en la forma debida al Gobierno, respecto del cual están acreditados; y habiendo obtenido su exequatur, serán reputados y considerados como tales por todas las autoridades, majistrados y habitantes del distrito consular en que residan.

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ART 32d

It is likewise agreed, that the consuls, their secretaries, officers and persons attached to the service of consuls, they not being citizens of the country in which the consul resides, shall be exempt from all public service; and also from all kind of taxes, imposts and contributions, except those which they shall be obliged to pay on account of commerce or their property, to which the citizens and inhabitants, native and foreign, of the country in which they reside are subject, being in everything besides subject to the laws of the respective States. The archives and papers of the consulates shall be respected inviolably and under no pretext whatever, shall any magistrate seize, or in any way interfere with them,

ARTÍCULO 32º

Se ha convenido igualmente que los Cónsules, sus Secretarios, oficiales y personas agregadas al servicio de los Consulados (no siendo estas personas Ciudadanos del pais en donde el Cónsul reside) estarán exentos de todo servicio público, y tambien de toda especie de pechos, impuestos y contribuciones, eceptuando aquellas que esten obligados á pagar por razon de comercio ú propiedad, y á las cuales están sugetos los Ciudadanos y habitantes naturales y estranjeros en el pais en que residen, quedando en todo lo demas sometidos á las leyes de los respectivos Estados. Los archivos y papeles de los Consulados serán respetados inviolablemente, y bajo ningun pretesto los ocupará Majistrado alguno, ni tendrá en ellos ninguna intervencion.

ART. 33d

The said consuls shall have power to require the assistance of the authorities of the country for the arrest, detention, and custody of deserters from the public and private vessels of their country; and for that purpose they shall address themselves to the courts, judges and officers competent, and shall demand in writing the said deserters proving by an exhibition of the registers of the vessels, or ship's roll or other public documents that those men

ARTÍCULO 33º

Los dichos Cónsules tendrán facultad para requerir el auxilio de las autoridades locales para la prision, detencion y custodia de los desertores de buques, públicos y particulares de su respectivo pais; y con este objeto se dirijirán á los tribunales, jueces y empleados competentes, y reclamarán por escrito los dichos desertores probando con la presentacion de los rejistros de los buques, del rol de la tripulacion, y de otros documentos públicos,

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were part of the said crews; and on this demand so proved (saving however where the contrary is proved by other testimonies) the delivery shall not be refused. Such deserters when arrested shall be put at the disposal of the said consuls and may be put in the public prisons, at the request and expense of those who reclaim them to be sent to the ships to which they belonged or to others of the same nation. But if they be not sent back within two months, to be counted from the day of arrest, they shall be set at liberty and shall be no more arrested for the same cause.

que aquellos hombres hacian parte de las dichas tripulaciones: y á tud de esta demanda, así probada (eceptuando no obstante él caso en que se probare por otros testimonios lo contrario) no se reusará la entrega. Aprehendidos dichos desertores serán puestos á disposicion de los mencionados cónsules y podrán ser depositados en las Cárceles públicas á solicitud y á espensas de los que los reclamen para ser enviados á los buques á que correspondian ó a otros de la misma nacion. Pero sino fuesen remitidos dentro de dos meses contados desde el dia de su arresto, serán puestos en libertad, y no volverán á ser presos por la misma causa.

ART 34th

For the purpose of more effectually protecting their commerce and navigation, the two contracting parties do hereby agree to form, as soon hereafter as circumstances will permit, a consular convention, which shall declare specially the powers and immunities of the consuls and vice consuls of the respective parties.

ARTÍCULO 34º

Con el objeto de protejer mas eficazmente su comercio y navegacion, las dos partes contratantes convienen aquí, en formar, luego que las circunstancias lo permitan, una convencion consular que declare mas especialmente las atribuciones é inmunidades de los Cónsules y Vice-Cónsules de las partes respectivas.

ART 35th

The United States of North America and the Republic of San Salvador, desiring to make as durable as possible the relations which are to be established by virtue of this treaty, have de-

ARTÍCULO 35º

La República de San Salvador y los Estados Unidos de Nort-América, deseando hacer tan duraderas cuanto sea posible las relaciones que han de establecerse en virtud del presente tratado,

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clared solemnly and do agree to the following points:—

1st The present treaty shall remain in full force and vigor for the term of twenty years from the day of the exchange of the ratifications; and if neither party notifies the other of its intention of reforming any or all the articles of this treaty, twelve months before the expiration of the twenty years stipulated above, the said treaty shall continue binding on both parties beyond the said twenty years until twelve months from the time that one of the parties notifies the other of its intention of proceeding to a reform.

2d If any one or more of the citizens of either party shall infringe any of the articles of this treaty, such citizens shall be held personally responsible for the same and the harmony and good correspondence between the nations shall not be interupted thereby; each party engaging in no way to protect the offender or sanction such violation.

3d If unfortunately any of the articles contained in this treaty should be violated or infringed in any way whatever it is expressly stipulated that neither of the two contracting parties shall ordain or authorize any acts of reprisal, nor shall declare war against the other, on complaints of injuries

han declarado solemnemente y convienen en los puntos siguientes.

1º El presente tratado permancerá en plena fuerza y vigor por el término de veinte años contados desde el dia del canje de las ratificaciones, y si doce meses ántes de espirar el término de veinte años estipulados arriba, ninguna de las partes contratantes notificare á la otra su intencion de reformar alguno ó todos los artículos de este tratado, continuará siendo obligatorio dicho tratado para ámbas partes mas allá de los citados veinte años, hasta doce meses despues de que una de las partes notifique su intencion de proceder á la reforma.

2º Si alguno ó algunos de los Ciudadanos de una ú otra parte infrinjieren alguno de los artículos contenidos en el presente tratado, dichos Ciudadanos serán por ello personalmente responsables, y no se interrumpirá en su consecuencia la armonía y buena correspondencia entre las dos naciones, comprometiéndose cada una á no protejer de modo alguno al ofensor ni á sancionar semejante violacion.

3º Si desgraciadamente algunos de los artículos contenidos en el presente tratado fuesen en alguna otra manera violados ó infrinjidos, se estipula espresamente que ninguna de las dos partes contratantes ordenará ó autorizará actos algunos de represalia, ni declarará la guerra

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or damages until the said party, considering itself offended shall have laid before the other a statement of such injuries or damages, verified by competent proofs, demanding justice and satisfaction, and the same shall have been denied in violation of the laws and of international right.

contra la otra por queja de injurias ó perjuicios, hasta que la parte que se considere ofendiva haya previamente presentado á la otra una esposicion de dichos perjuicios ó injurias, apoyada con pruebas competentes, exijiendo justicia y satisfaccion, y esto haya sido negado con violacion de las leyes y del derecho internacional.

ART. 36.

The present treaty of peace, amity, commerce and navigation shall be approved and ratified by the President of the United States by and with the advice and consent of the Senate thereof; and by the President of the Republic of San Salvador with the consent and approbation of the Congress of the same, and the ratifications shall be exchanged in the city of Washington or San Salvador within eight months from the date of the signature thereof, or sooner if possible.

ARTÍCULO 36º

El presente tratado de paz, amistad, comercio y navegacion, será aprobado y ratificado por el Presidente del Salvador con acuerdo y consentimiento del Congreso del mismo; y por el Presidente de los Estados Unidos de América, con acuerdo y consentimiento del Senado de los mismos; y las ratificaciones serán canjeadas en la Ciudad de Washington ó en la Ciudad de San Salvador dentro de ocho meses contados desde el dia de la firma ó antes si fuere posible.

In faith whereof we the plenipotentiaries of the United States of America and of the Republic of San Salvador have signed and sealed these presents in the city of Leon on the second day of January in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States the seventy fourth.

En fé de lo cual, nosotros los Plenipotenciarios de la República de San Salvador y de los Estados Unidos de América, hemos firmado y sellado las presentes en la Ciudad de Leon, el dia dos de Enero en el año de Nuestro Señor mil ochocientos cincuenta—

[Seal] E. GEO. SQUIER
[Seal] AGUSTIN MORALES

(L.S.) AGUSTIN MORALES.
(L.S.) E. GEO. SQUIER.

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NOTES

Following various precedents of earlier negotiations, this agreement is called in the preamble "a treaty or general convention"; but elsewhere in the text it is referred to simply as a "treaty" (e.g., Articles 35 and 36).

The signed original of this treaty which is in the file is in English only; the procedure adopted was that one original was written in English, for the Government of the United States, and the other in Spanish, for the Government of El Salvador. One consequence of such procedure is that the legislative body to which the treaty is submitted has before it only the version in its own official language.

The Spanish version printed above is from the Salvadoran instrument of ratification of May 28, 1852, which includes that version only. As the printed text shows, the *alternat* was duly observed.

Other papers in the file are the duplicate United States instrument of ratification of November 14, 1850 (countersigned by William S. Derrick, then Chief Clerk, as Acting Secretary of State), the certificate of the exchange of ratifications at San Salvador on June 2, 1852, which is in Spanish, and the original proclamation of April 18, 1853; there are also three attested resolutions of the Senate, of September 24 and 27, 1850, and April 4, 1853 (Executive Journal, VIII, 246, 257; IX, 143–44).

It is of some interest to note that the expression "the Republic of San Salvador" is used throughout the English version, except in three places (Articles 6, 14, and 27), where "San Salvador" is used instead. In the Spanish version, while "la República de San Salvador" is used most frequently, the expression "San Salvador" (Articles 6 and 14) appears three times, "el Salvador" or "del Salvador" (Articles 27, 29, 30, and 36) appears four times, and "República del Salvador" (Article 14) appears once. In the recitals and the conclusion of the Salvadoran instrument of ratification the terms used are "Estado Soberano del Salvador" and "Estado del Salvador".

The Senate Proceedings

This treaty was submitted to the Senate with the long presidential message of March 19, 1850, in which relations with Nicaragua, Costa Rica, Honduras, El Salvador, and Guatemala were discussed (Executive Journal, VIII, 153–58; printed in the notes to Document 141). That message of President Taylor was received in the Senate on March 25, and, with the four treaties which accompanied it (three submitted for Senate action and one communicated for information, respectively, numbers 1, 5, 6, and 4 below), was ordered printed in confidence for the use of the Senate on April 10, 1850 (*ibid.*, 163); but no copy of that print has been found.

The message mentions six treaties which had been signed with four of the countries of Central America (all but Costa Rica); but for the most part their dates are not given, and they are thus somewhat difficult of identification. The treaties referred to are as follows:

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1. The Treaty of Peace, Amity, Commerce, and Navigation with Guatemala of March 3, 1849 (Document 135), which was negotiated and signed at Guatemala by Elijah Hise, "Chargé d'Affaires of the United States of America to the Republic of Guatemala", and which was submitted to the Senate with the message of March 19, 1850, and went into force. Aside from its clauses regarding expiration and the exchange of ratifications, that treaty is almost literally identical with the treaty with the Central American Federation of December 5, 1825 (Document 50).

2. The Treaty of Peace, Amity, Commerce, and Navigation with Honduras of May 28, 1849 (D.S., Unperfected V1), which was negotiated and signed at Guatemala by Hise, but which was neither submitted nor communicated to the Senate and did not go into force. Its provisions were almost the same as those of the treaty with the Central American Federation of December 5, 1825 (Document 50), except for the omission of Article 32 of that treaty.

3. The Treaty of Peace, Amity, Commerce, and Navigation with Nicaragua of May 31, 1849 (D.S., Unperfected S2), which was negotiated and signed at Guatemala by Hise, but which was neither submitted nor communicated to the Senate and did not go into force. Its provisions were almost the same as those of the treaty with the Central American Federation of December 5, 1825 (Document 50).

4. The treaty with Nicaragua of June 21, 1849, relative to the construction of a ship canal (D.S., Unperfected T2), which was negotiated at Guatemala by Hise. That treaty was disapproved by both Governments (Executive Journal, VIII, 157); it was not submitted to the Senate, although a copy of it was transmitted for the information of the Senate with the message of March 19, 1850; and it did not go into force.

5. The Treaty of Amity, Navigation, and Commerce with Nicaragua of September 3, 1849 (D.S., Unperfected U2), which was negotiated and signed at León by Ephraim George Squier, successor of Hise as Chargé d'Affaires to Guatemala, and which was submitted to the Senate with the message of March 19, 1850. The Senate took no final action on that treaty, and it did not go into force. The basis of the treaty was that with the Central American Federation of December 5, 1825 (Document 50), but with various alterations and additions; beyond these, Article 35 contained provisions regarding the right of way or transit across Nicaragua and a guaranty on the part of the United States of the neutrality of the line of a proposed canal.

6. This treaty with El Salvador of January 2, 1850, which was submitted to the Senate and which went into force.

Of the six treaties mentioned, two (numbers 5 and 6 above), were negotiated and signed by Ephraim George Squier, Chargé d'Affaires to Guatemala, namely, that with Nicaragua of September 3, 1849, and this treaty with El Salvador of January 2, 1850. The other four treaties were negotiated and signed by Elijah Hise, the predecessor of Squier as Chargé d'Affaires to Guatemala; as to those four treaties, see the notes to the treaty with Guatemala of March 3, 1849 (Document 135).

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During his mission to Central America Squier negotiated and signed, besides the treaty with Nicaragua of September 3, 1849, and this treaty with El Salvador, which were both submitted to the Senate with the presidential message of March 19, 1850, a Treaty of Amity, Navigation, and Commerce with Honduras of September 28, 1849 (D.S., Unperfected W1); but that treaty with Honduras was neither submitted to the Senate nor mentioned in the message of March 19, 1850. Its provisions were the same as those of the treaty with Nicaragua of September 3, 1849, except for Article 35 of the Nicaraguan treaty, regarding a proposed canal; both treaties were based, though with alterations and additions, on the treaty with the Central American Federation of December 5, 1825 (Document 50). Appended to the treaty with Honduras is a protocol in three articles, signed and sealed by the Plenipotentiaries on the date of signature of the treaty, providing for the tentative cession of Tigre Island, in the Gulf of Fonseca, to the United States.

The term allowed for the exchange of ratifications of this treaty with El Salvador of January 2, 1850, was eight months from the date of signature, or until September 2, 1850; that period had expired when the Senate resolution of advice and consent was adopted (September 24); accordingly, on September 27 a further resolution was adopted, reciting the facts and consenting to the exchange of ratifications at any time prior to April 1, 1851 (Executive Journal, VIII, 257).

The Salvadoran Ratification

It appears that this treaty was twice ratified by the Government of El Salvador.

The treaty was submitted to the National Legislature soon after its signature; and the ratifying decree of the Legislature, printed copies of which were transmitted to Squier with a note of the Minister of Foreign Relations of March 5, 1850, issued under date of February 23, 1850 (D.S., 2 Despatches, Guatemala, No. 28, March 31, 1850, enclosures D and D2). It seems that ratification followed, though record of the exact date thereof has not been found; and it is stated that the instrument of ratification was sent to Eduardo Carcache, Chargé d'Affaires of Nicaragua at Washington from December 24, 1849, to July 8, 1850, for exchange (D.S., 1 Despatches, Nicaragua, No. 9, June 14, 1852); but Carcache left Washington before the Senate acted on the treaty, and there is no mention of the Salvadoran ratification in his correspondence with the Secretary of State.

The treaty was again ratified by the Government of El Salvador on May 28, 1852. The instrument of ratification of that date, the original of which is in the treaty file, reads in translation as follows:

Francisco Dueñas, President of the Sovereign State of El Salvador, in Central America

To all who shall see these presents, greeting:

Whereas a General Treaty of Amity, Navigation, and Commerce between the United States of America and the sovereign State of El Salvador was concluded

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and signed at the city of León, Nicaragua, on the second of January in the year of our Lord one thousand eight hundred and fifty, which treaty reads literally:

[Here follows the Spanish version of the treaty]

And whereas the legislative bodies of the state, in the exercise of the authority which is granted to them by Article 28 of the Constitution, decreed its ratification on the fifteenth [1] of February, one thousand eight hundred and fifty, as recorded on the following sheet;

Therefore, I, Francisco Dueñas, President of the sovereign State of El Salvador, having seen and examined said treaty, by these presents and in execution of the said decree and consent of the legislative power, accept, ratify, and confirm it in all and each one of its articles and clauses. In testimony whereof I have ordered to be affixed thereto the seal of the state.

Done in the city of San Salvador and signed by my hand on the twenty-eighth of May in the year of our Lord one thousand eight hundred and fifty-two, thirty-first of the independence of Central America.

[Seal appendant] FRAN. DUEÑAS

By order of the President:
MGL. CASTELLANOS

On the pages following the close of the clauses of ratification is a certified copy of the decree of the Salvadoran Legislature of February 23, 1850, which is cited above and mentioned in the ratification. That decree, as there written, reads in translation as follows:

Ministry of Foreign Relations and the Interior of the Supreme Government of the State of El Salvador

The President of the State of El Salvador

Whereas the General Assembly has decreed as follows:

The Chamber of Senators of the State of El Salvador, considering that the Treaty of Peace, Commerce, and Navigation concluded in the city of León on the second day of January last between plenipotentiaries of the Republic of the United States of the North and of the sovereign and independent State of El Salvador, is useful and advantageous to both parties, being based on the general principles of international law and adjusted to a strict reciprocity, has been pleased to decree and decrees:

ARTICLE 1. The Treaty of Peace, Amity, Commerce, and Navigation concluded in the city of León, Nicaragua, on the second day of January of the current year, between the Plenipotentiaries of the Republic of the United States of America and of the sovereign and independent State of El Salvador, Messrs. E. George Squier and Licenciado Agustin Morales, is ratified in all its parts.

ARTICLE 2. The ratification of the President of the United States of America, with the advice and consent of the Senate, having been obtained, the treaty shall be observed as a law of the state.

Done in the assembly hall of the Senate on the fifteenth of February, one thousand eight hundred and fifty.

FERMIN PAREDES, *President of the Senate*
ELÍAS DELGADO, *Secretary of the Senate*
TOMÁS MEDINA, *Secretary of the Senate*

Chamber of Deputies, San Salvador, February eighteenth, one thousand eight hundred and fifty. To the Executive Power.

AGUSTIN MORALES, *President of the Chamber of Deputies*
JOSÉ MARÍA ZELAYA, *Secretary of the Chamber of Deputies*
ANJEL QUIROZ, *Secretary of the Chamber of Deputies*

[1] It seems that the date was February 23, 1850.

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Therefore: Let it be executed. San Salvador, February twenty-third, one thousand eight hundred and fifty.

DOROTEO VASCONCELOS

The Chief of Section in charge of the Ministry of Foreign Relations:
MARCELINO VALDEZ

True copy. San Salvador, May twenty-eighth, one thousand eight hundred and fifty-two.

[Seal] CASTELLANOS

Thereafter, on the last page of the instrument of ratification, is written an unsigned "note" which reads thus in translation:

NOTE.—In the exchange of the present treaty, effected today, the following differences were noticed in the collating:
Article 15. The Spanish copy and original say "nuestros"—the English copy, "neutro". [1]
Article 21. After "un buque nacional de guerra" in the Spanish copy and original, the words "public or private", which are in the English copy, are not translated.[2]
San Salvador, June second, one thousand eight hundred and fifty-two.

THE EXCHANGE OF RATIFICATIONS

The ratifications of this treaty were not exchanged until more than two years after its signature. The time limited for the exchange, even as extended by the Senate resolution of September 27, 1850, expired on March 31, 1851; the place of exchange (Article 36) was to be either "the city of Washington or San Salvador".

Instructions under date of June 6, 1851, were given to John Bozman Kerr, who had been appointed Chargé d'Affaires to Nicaragua on the previous March 12, which related to the exchange of ratifications both of this treaty and of that with Guatemala of March 3, 1849 (Document 135), and which included the following (D.S., 15 Instructions, American States, 116–18):

A box which you have received from the Department, contains the President's ratifications of two treaties, one with the Republic of Guatemala, signed on the 3d. of March, 1849, and the other with the Republic of San Salvador, signed on the 2nd. of January, 1850. The periods limited for the exchange of the ratifications of these treaties, expired before they had been approved by the Senate of the United States, but that Body, by two several resolutions of the 27th. of September, authorized that ceremony to be performed at any time prior to the 1st of April, last. As it was judged advisable to forward the ratifications by the Chargé d'Affaires of the United States, the time limited by the Senate has now expired, it having been impracticable for you to reach that country for the purpose of making the exchange within that time. The punctual observance of the formality, however, is not in this instance material, and there can be no doubt that the Senate would approve of the exchange if it were yet to be made. Consequently you may make a proposition for that purpose to the governments of San Salvador and Guatemala. This, however, must embrace a condition, that the

[1] In the signed original in the file (second sentence of the first paragraph of Article 15, "neutral places") the word is "neutral", not "neutro"; in the corresponding Spanish "nuestros" was a slip of the scrivener for "neutros".

[2] The omission from the Spanish version (first sentence of Article 21) of the words "público ó particular" was presumably unintentional; see Article 20 of Document 50, which was the basis for this treaty.

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treaties shall not be published or be considered as obligatory by either government, until the Senate of the United States shall have duly approved of the exchange. This condition may be expressed in the certificate of exchange, a draft of which you will herewith receive. The certificate must be executed in duplicate, one copy to be placed with their ratifications and the other with ours. You may send the ratifications to Washington whenever this can be done without expense to the government. You will, however, at once notify the Department when the exchanges shall have been effected, in order that application may be made to the Senate for its sanction of the proceeding, and that the treaties may be published, if that application should be successful. You will herewith receive the necessary powers to effect the exchanges.

Kerr did not reach San Salvador until about April 15, 1852; but not until he returned there in the latter part of May was the exchange of ratifications possible. It seems that the first instrument of ratification of the treaty on the part of the Government of El Salvador, which, as heretofore stated, had been executed some two years earlier and entrusted to Eduardo Carcache, Chargé d'Affaires of Nicaragua at Washington, for exchange, had remained with the Government of Nicaragua. Kerr wrote that the "authenticated copy of the treaty, placed two years before in the hands of Mr Edward Carcache, in view of the Exchange at Washington by him, was not received in San Salvador, till I had again arrived there, and I was thus detained ten days longer to give the government full time for making out a correct copy in due form" (D.S., 1 Despatches, Nicaragua, No. 9, June 14, 1852; see also *ibid.*, No. 8, May 16, 1852, and enclosures).

The ratifications were exchanged at San Salvador on June 2, 1852, subject to the approval of the United States Senate. The certificate of the exchange of ratifications is in the following form (translation from the Spanish):

We, the undersigned, Miguel Castellanos, Chief of Section in charge of the Ministry of Foreign Relations of the sovereign State of El Salvador, and John Bozman Kerr, Chargé d'Affaires of the United States of America near the Republic of Nicaragua and specially empowered for this act by the President of the United States of America, having met for the purpose of exchanging the ratifications of the General Convention of Peace, Amity, Commerce, and Navigation between the sovereign State of El Salvador and the United States of America, signed at the city of León, Nicaragua, on the second day of January of the year of our Lord one thousand eight hundred and fifty, certify:

That, after having compared the copy in English sent by the Department of State at Washington with the copy in Spanish, and both with the original in Spanish deposited in the archives of San Salvador, we have effected the said exchange.

We further certify that this act took place with the understanding that the said convention is not to be binding upon either of the parties or to be published by either until the Senate of the United States of America shall have duly sanctioned the exchange of the said ratifications.

In witness whereof we have signed this instrument in duplicate and sealed it with our respective seals at the city of San Salvador this second of June in the year of our Lord one thousand eight hundred and fifty-two.

MGL. CASTELLANOS [Seal]
JOHN BOZMAN KERR [Seal]

By his message of August 10, 1852, which was received in the Senate August 13, President Fillmore informed that body of the circumstances (Executive Journal, VIII, 437):

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I transmit a copy of the certificate of the exchange of the ratifications of the general convention of peace, amity, commerce, and navigation between the United States and the Republic of San Salvador, signed at Leon, in Nicaragua, on the 2d of January, 1850. It will be seen that the exchange was not effected until the second of June last, but that it was stipulated that the convention was not to be binding upon either of the parties thereto until the Senate of the United States should have duly sanctioned the exchange.

The Senate by its resolution of the 27th of September, 1850, authorized the exchange to take place at any time prior to the 1st of April, 1851.

Mr. Kerr, the chargé d'affaires of the United States to Nicaragua, however, who was authorized to make the exchange on the part of this Government, was unavoidably detained in that Republic, in consequence of which the exchange could not be effected within the period referred to.

The expediency of sanctioning the exchange which has been made by Mr. Kerr, and of authorizing the convention to go into effect, is accordingly submitted to the consideration of the Senate.

The Senate resolution of advice and consent to the exchange of ratifications was not adopted until April 4, 1853; it was in the following form (*ibid.*, IX, 144):

Whereas the time limited by the resolution of the Senate of the 27th September, 1850, for the exchange of the ratifications of the general convention of peace, amity, commerce, and navigation between the United States and the Republic of San Salvador, concluded at Leon, in Nicaragua, on the 2d of January, 1850, having expired before the said exchange of ratifications could be effected; and the ratifications of the said general convention having been since exchanged, notwithstanding such limitation, but upon the condition that the said general convention is not to be binding upon either of the parties thereto, or to be published by either, until the Senate of the United States shall have duly sanctioned the exchange of ratifications aforesaid: Therefore,

Resolved (*two-thirds of the Senators present concurring*), That the Senate advise and consent to the said exchange of ratifications of the general convention of peace, amity, commerce, and navigation between the United States and the Republic of San Salvador, concluded at Leon, in Nicaragua, on the 2d January, 1850, and the publication thereof, the limitations contained in the said general convention and in the resolution of the Senate of the 27th of September, 1850, to the contrary notwithstanding.

The proclamation was issued two weeks later, under date of April 18, 1853, and thus somewhat more than three years after the signature of the treaty. That paper is in customary form except for omission of the usual statement of place and date of the exchange of ratifications.

The Negotiations

Elijah Hise was appointed Chargé d'Affaires of the United States to the Republic of Guatemala on March 31, 1848, and on the following June 3 he was furnished with instructions (D.S., 15 Instructions, American States, 51–61) which are in large part printed in the notes to Document 135.

On April 2, 1849, Ephraim George Squier was appointed to succeed Hise as Chargé d'Affaires to Guatemala. Squier was furnished with letters of credence to the Ministers for Foreign Affairs of Guatemala, Costa Rica, El Salvador, Honduras, and Nicaragua, the first under date of April 25, 1849, and the others under date of May 1, 1849 (D.S., 3 Credences, 268–69). He had also full powers, under date of

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April 24, 1849, similar in form and content to that previously granted to Hise for negotiating with Guatemala (*ibid.*, 247; see the notes to Document 135), which authorized him "to agree, treat, consult and negotiate of and concerning general commerce . . . and claims of Citizens of the United States . . . and to conclude and sign a Treaty or Treaties, Convention or Conventions touching the premises" with each of those five Governments (*ibid.*, 267).

Thus the date of formal recognition by the United States of three of the Republics of Central America, namely, Costa Rica, Honduras and Nicaragua, as separate states, cannot be placed later than April 24, 1849; the recognition of Guatemala as a separate state was earlier (see the notes to Document 135); and recognition of El Salvador as a separate state cannot be dated later than June 3, 1848, when a full power was issued to Elijah Hise to treat with that Government (D.S., 3 Credences, 248; cf. the statements as to recognition in Senate Document No. 40, 54th Congress, 2d session, serial 3469, pp. 11–12, summarized in Moore, Digest, I, 92).

The instructions to Squier of May 1, 1849, included those previously given to Hise; and they contained also somewhat elaborate observations on relations with the various countries of Central America, Nicaragua in particular. Relevant portions of those instructions follow (D.S., 15 Instructions, American States, 64–94, *passim*):

Herewith you will receive a copy of the instructions under date 3d June, last, given to your predecessor on his departure upon the mission to which you are appointed. They contain a full history and statement of the condition of the relations between the United States and Central America. The Department is not aware that those relations have since undergone any material change.

. . . . . .

It is understood that the dissolution of the former confederacy of Central America was in a great degree occasioned by jealousies between the States of Guatemala and San Salvador, arising out of differences of opinion as to the powers of the Federal government aggravated by the circumstance that the seat of that Government was at the city of Guatemala, which the people of San Salvador supposed was an undue partiality. You will be diligent in your enquiries with a view of ascertaining whether or not it is probable that those States will again be united. If you should arrive at the conclusion that the formation of another confederacy is hopeless, the expediency of recognizing the independence of the several States will then no longer be questionable. Indeed, this has already been decided in the affirmative in regard to Guatemala by the mission thither of both Mr Hise and yourself, and in regard to San Salvador also by his having been empowered and instructed to conclude a treaty with the Governments of both those States. You are also furnished with full powers to conclude treaties of commerce with them, which you will use in case Mr Hise should not have succeeded in accomplishing those objects prior to your arrival. If you should be of the opinion that the States of Nicaragua, Costa Rica, and Honduras are as capable of maintaining their independence and of discharging the duties of sovereignty as Guatemala and San Salvador, the Department is not aware of any good reason why treaties may not be concluded with them also. You will accordingly herewith receive full powers for that purpose. In negotiating these treaties, you will in general, be governed by the instructions to your predecessor. It is desirable, however, that the Treaty with Nicaragua should contain an article similar to that in the late treaty between the United States and New Granada, securing to our citizens and their effects a free transit between the two oceans by the way of Nicaragua river and lakes Nicaragua or Leon and over any Canal or railroad which may hereafter be constructed along that route

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on the same terms enjoyed by the citizens of Nicaragua. In the present posture of the conflicting claims respecting the Mosquito shore and the port of San Juan, it is not deemed expedient to give as a compensation for the grant of the right of way any guaranty of the independence of the country through which the canal or rail road might pass. Such a guaranty is entirely inadmissible in the proposed treaty. I greatly mistake, however, the intentions of the people of this country if they would supinely allow any one of the three contemplated passages to the Pacific to be directly or indirectly either held or obstructed by any great maritime power. There can be as little doubt that they will deem the people of the Spanish American States the rightful inheritors of all territory within their respective limits to which Spain had a just title.

Hise left Guatemala on his way to the United States on June 26, 1849. During his stay of some seven months in Central America he had negotiated and signed four treaties, one with Guatemala (Document 135), one with Honduras (May 28, 1849; D.S., Unperfected V1), and two with Nicaragua (May 31 and June 21, 1849; D.S., Unperfected S2 and T2). For the negotiation of the three treaties last mentioned, which were not submitted to the Senate and which did not go into force, he had no full powers and acted contrary to his instructions; but he had signed no treaty with El Salvador, although furnished with a full power of June 3, 1848, for that purpose (D.S., 3 Credences, 248), and instructions of the same date (D.S., 15 Instructions, American States, 51–61).

The instructions to Squier of May 1, 1849, authorized and directed him to negotiate a treaty with El Salvador in the event that Hise should not have succeeded in doing so prior to his arrival. Squier arrived at San Juan de Nicaragua (San Juan del Norte or Greytown) on June 6, 1849 (D.S., 2 Despatches, Guatemala, No. 1, June 10, 1849), and at León, Nicaragua, on July 5, 1849 (*ibid.*, No. 3, August 20, 1849). The negotiations of the treaty of January 2, 1850, were conducted at León; and it seems that there was no objection on the part of the Plenipotentiary of El Salvador, Agustin Morales, to the proposal of the United States for a renewal of the treaty with the Central American Federation of December 5, 1825 (Document 50).

That treaty with the Central American Federation was the basis of this treaty with El Salvador. Articles 6 and 25 of this treaty are not found in the earlier agreement; the clauses of this treaty regarding the holding and disposal of real property are very broad (cf. Articles 3 and 12 of the treaty with El Salvador with Articles 3 and 11 of the treaty with the Central American Federation); there are some other differences of substance (cf. Articles 13, 35, and 36 of the later treaty with El Salvador with Articles 12 and 33 of the earlier); and there are variances of wording and phrasing; but in most essentials the two agreements are the same.

The original treaty was transmitted to the Department of State with a brief despatch of Squier of January 5, 1850 (D.S., 2 Despatches, Guatemala, No. 19), which is endorsed as received on February 13, 1850.

Nothing definite appears regarding the full powers of the Plenipotentiary of El Salvador other than the statement in the preamble of the treaty.

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ECUADOR : FEBRUARY 9, 1850

Convention for the Settlement of the Case of the Brig "Morris", signed at Quito February 9, 1850. Original in English and Spanish. Not subject to ratification by the United States. As to ratification by Ecuador, see the editorial notes. Not proclaimed.

Convention.

The undersigned, John Trumbull Van Alen, Chargé d'affaires of the United States of America and Antonio Mata, Plenipotentiary on the part of the Republic of the Ecuador, being duly authorized to conclude a convention for the payment of the debt of the Ecuador, on account of the indemnification claimed by the proprietors of the North American Brig "Morris", which was captured and sold by the authorities of Colombia in the years eighteen hundred and twenty five and eighteen hundred and twenty six, have agreed to conclude and seal this affair, in all its respects, under the following articles.

ART 1. The Government of the Ecuador obliges itself to pay, to the order of the Chargé d'affaires of the United States of North America, or to the order of any other person duly authorized by the Government of the United

Convencion.

Los infrascritos, Antonio Mata, Plenipotenciario por parte de la República del Ecuador, i John Trumbull Van Alen, Encargado de Negocios de los Estados Unidos de América, hallándose debidamente autorizados para celebrar una convencion, sobre el pago de la deuda perteneciente al Ecuador, por la indemnizacion reclamada por los proprietarios del Bergantin Norte Americana "Morris", que fue capturado i vendido por las autoridades de Colombia en los años de mil ochocientos veinte y cinco y mil ochocientos veinte y seis, han convenido en concluir i sellar este asunto, en todas sus partes, bajo los artículos siguientes.

ART 1. El Gobierno del Ecuador se obliga á pagar á la órden del Señor Encargado de Negocios de los Estados Unidos de Norte America, ó á la órden de cualquiera otra persona debidamente autorizada por el Gobierno de los

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States, the sum of fourteen thousand and sixteen dollars and eighty two hundredths as follows: five thousand four hundred and eighty five dollars for the absolute indemnification of the principal of the losses and injuries which the persons interested in the North American Brig "Morris" have claimed of the Government of the Ecuador, through the Legation of their country, and eight thousand five hundred and thirty one dollars, and eighty two hundredths, for the current interest, at the rate of six per cent per annum from the twelfth of May, eighteen hundred and twenty five, the date of the capture, to the fifteenth of April, eighteen hundred and fifty one, the average time between the dates of payment, according to the conditions of the following article, it being stipulated that, in virtue of this Convention, the proprietors of the Brig "Morris" or persons interested shall have no right, hereafter, to prefer any new demand in relation to this subject.

Estados Unidos, la cantidad de catorce mil diez y seis pesos, ochenta y dos centimos, en esta forma: cinco mil cuatro cientos, ochenta y cinco pesos, por indemnizacion absoluta del principal, pérdidas y perjucios que los interesados del Bergantin Norte Americana "Morris", han reclamado del Gobierno del Ecuador por conducto de la Legacion de su pais; y ocho mil quinientos treinta y un pesos, ochenta y dos céntimos, por intereses corridos, á razon de seis por ciento al año, desde doce de Mayo, de mil ochocientos veinte y cinco, fha de la captura, hasta el quince de Abril de mil ochocientos cincuenta y uno, tiempo intermedio del en que se hará el pago en los terminos que se espresarán en el articulo siguiente; debiendo advertirse, que á virtud de este convenio, los interesados ó proprietarios del Bergantin "Morris", no tendrán en lo suscesivo derecho alguno para intentar ninguna nueva demanda á este respecto.

ART 2. The payment of the capital and interest above expressed shall be made in the following manner, one half of the whole sum on the first of February, and the other half on the first of July, eighteen hundred and fifty one.

ART 2. El pago del capital i reditos espresados, tendrá lugar de la manera siguientes la mitad de la suma total, el primero de Febrero, i la otra mitad el primero de Julio de mil ochocientos cincuenta y uno.

ART 3. This convention shall be presented by the Executive of the Ecuador to the national

ART 3. Este convenio será presentado por el P.E. del Ecuador al Congreso Nacional de la misma

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Congress of this Republic, at its next session, in order that it may approve it and vote the sum necessary for carrying it into effect.

ART 4. In case that conventions for payment have not been formed between the United States and the Republics of Venezuela and New Granada, relative to the case of the Brig "Morris", the Ecuador shall not be bound by this Convention.

In witness whereof, the undersigned have signed and sealed two copies of this convention, in the city of Quito, capital of the Republic of the Ecuador, on the ninth of February, eighteen hundred and fifty.

JOHN TRUMBULL VAN ALEN
[Seal]

ANTONº MATA
[Seal]

Republica en sus proximas sesiones, á fin de que pueda abrobarlo y votar la suma necesaria para llevarlo á efecto.

ART 4. En el evento de que no se hubiesen hecho convenciones de pago entre los Estados Unidos y las Republicas de Venezuela y la nueva Granada, relativamente al caso del Bergantin "Morris", el Ecuador no estará obligado por el presente convenio.

En fé de lo cual, los infrascritos han firmado y sellado dos ejemplares de este convenio, en la ciudad de Quito, Capital de la Republica del Ecuador, el nueve de Febrero de mil ochocientos y cincuenta.

ANTONº MATA
[Seal]

JOHN TRUMBULL VAN ALEN
[Seal]

NOTES

The original of this convention, with which the text here printed has been collated, is an enclosure with the despatch of John Trumbull Van Alen, Chargé d'Affaires at Quito, of February 9, 1850, the date of signature of the convention (D.S., 1 Despatches, Ecuador, No. 28). That original is written in English and Spanish, in parallel columns, with the English version at the left. As may be seen from the printed text, the principle of the *alternat* was observed.

THE FULL POWERS

While nothing is said in the convention regarding full powers, it appears that in this case the original full powers were exchanged. That of John Trumbull Van Alen, Chargé d'Affaires at Quito, was transmitted to the Minister of Foreign Affairs of Ecuador on January 7, 1850 (D.S., 1 Despatches, Ecuador, No. 26, January 8, 1850, enclosure H); it was under date of July 5, 1849, and in customary

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form, giving authority "to agree, treat, consult and negotiate of and concerning claims of citizens of the United States against the Government of the late Republic of Columbia and against the Government of Ecuador" (D.S., 3 Credences, 283).

The original full power of the Plenipotentiary of Ecuador is with the despatch of February 9, 1850 (D.S., 1 Despatches, Ecuador, No. 28); in translation it reads as follows:

The Vice President of the Republic of Ecuador, in Charge of the Executive Power

To all to whom these presents may come, Greeting:

Judging it advisable to enter into an agreement (*estipulación*) having for its purpose the acknowledgment, settlement, liquidation, and the manner and terms under which the Government of Ecuador should meet the obligations which at the time of the dissolution of Colombia were left unpaid to the citizens of the United States in the cases of the brig *Morris*, we have decided to confer, as we by these presents do confer, full and special power on Dr. Antonio Mata, Chief Clerk of the Ministry of the Interior and Foreign Relations, whose patriotism, learning, and judgment inspire in us absolute confidence: by virtue thereof he shall proceed to negotiate and sign the aforesaid agreement (*convenio*) with the Chargé d'Affaires of the United States of North America, who may to this effect be invested with full powers, issued in due form; it being understood that the settlement or convention concluded by our Plenipotentiary shall not be valid nor have any effect until, conformably with the Constitution of the Republic, it be ratified by the Executive Power.

In faith whereof we issue to him these presents, signed by my hand, [Seal] sealed with the great seal of the Republic, and countersigned by the Minister Secretary of State in the Office of Foreign Relations at Quito on January 25, 1850.

MANUEL DE ASCASUBI

BENIGNO MALO

The full power of the Plenipotentiary of Ecuador for the negotiation of this convention, like that for the negotiation of the convention of June 15, 1849 (Document 136), stipulated that "the settlement or convention concluded by our Plenipotentiary shall not be valid nor have any effect until, conformably with the Constitution of the Republic, it be ratified by the Executive Power"; but in this case no record has been found of formal ratification by the Executive such as was given in the case of the earlier convention.

THE CASE OF THE "MORRIS"

The facts in the case of the *Morris* are summarized in the notes to the convention of November 5, 1844, with New Granada (Document 110).

The case of the *Morris* was mentioned in Article 3 of the convention with Colombia of November 25, 1829 (Document 67), but was then left open for future adjustment.

The liability of the former Republic of Colombia, in this as in other cases, devolved upon the three successor Republics in the proportions of 50 percent for New Granada, 28½ percent for Venezuela, and 21½ percent for Ecuador (Moore, Digest, V, 559–61; see also the notes to Document 67); the amount of the claim was a matter of negotiation in each case, as it had not been fixed.

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The adjustment of the claim in the case of the *Morris*, so far as it concerned the Republic of Venezuela, was made by the exchange of notes of February 26 and 29 and March 1, 1844 (Document 104); and adjustment, so far as it concerned the Republic of New Granada, was made by the convention of November 5, 1844 (Document 110).

The Settlement

The settlement made with Ecuador in the case of the *Morris* was on precisely the same basis as that made with New Granada. The sum agreed on with New Granada was $12,756.47½; taking this as 50 percent of the total claim, the liability of Ecuador for her proportionate share, 21½ percent thereof, would be the amount fixed in this convention, or $5,485 principal. To this was added interest at 6 percent from May 12, 1825, the date of the capture of the *Morris*, to April 15, 1851, the average date of payment under this convention.

Article 3 provided for submission of the convention to the Congress of Ecuador "in order that it may approve it and vote the sum necessary for carrying it into effect". Under date of July 2, 1851, Courtland Cushing, successor of Van Alen as Chargé d'Affaires at Quito, wrote that he was "informed that in the appropriation bill now pending before the National Convention, provision is made for the payment" under this convention (D.S., 2 Despatches, Ecuador, No. 3, July 6, 1851, enclosure E). Presumably that bill was passed, for under date of July 28, 1851, the Minister of Foreign Affairs of Ecuador transmitted to Cushing an order against the Treasury of Guayaquil for $14,332.15 in the case of the *Morris* (*ibid.*, No. 5, August 5, 1851, enclosures K and L), and in the following October and November that order was paid in the amount of $14,591.37 current money, including interest from September 1 (D.S., 2 Consular Despatches, Guayaquil, No. 22, November 12, 1851).

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Treaty Series No. 122
9 Statutes at Large, 995-98
18 *ibid.*, pt. 2, Public Treaties, 322-25

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GREAT BRITAIN : APRIL 19, 1850

The Clayton-Bulwer Treaty. Convention for Facilitating and Protecting the Construction of a Ship Canal between the Atlantic and Pacific Oceans, and for Other Purposes, signed at Washington April 19, 1850. Original in English.
Submitted to the Senate April 22, 1850. Resolution of advice and consent May 22, 1850. Ratified by the United States May 23, 1850. Ratified by Great Britain June 11, 1850. Ratifications exchanged at Washington July 4, 1850. Proclaimed July 5, 1850.
The declaration of the Plenipotentiary of Great Britain, dated June 29, 1850, is printed in the editorial notes, with the relevant correspondence.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND HER BRITANNIC MAJESTY.

THE UNITED STATES OF AMERICA and HER BRITANNIC MAJESTY, being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a Convention their views and intentions with reference to any means of communication by Ship Canal, which may be constructed between the Atlantic and Pacific Oceans, by the way of the River San Juan de Nicaragua and either or both of the Lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean,—THE PRESIDENT OF THE UNITED STATES, has conferred full powers on JOHN M. CLAYTON, Secretary of State of the United States; and HER BRITANNIC MAJESTY on the Right Honourable Sir HENRY LYTTON BULWER, a Member of Her Majesty's Most Honourable Privy Council, Knight Commander of the Most Honourable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States, for the aforesaid purpose; and the said Plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles.

ARTICLE I.

The Governments of the United States and Great Britain hereby declare, that neither the one nor the other will ever obtain or maintain

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for itself any exclusive control over the said Ship Canal; agreeing, that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have, to or with any State or People for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito Coast or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection or influence that either may possess with any State or Government through whose territory the said Canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said Canal, which shall not be offered on the same terms to the citizens or subjects of the other.

ARTICLE II.

Vessels of the United States or Great Britain, traversing the said Canal, shall, in case of war between the contracting parties, be exempted from blockade, detention or capture, by either of the belligerents; and this provision shall extend to such a distance from the two ends of the said Canal, as may hereafter be found expedient to establish.

ARTICLE III.

In order to secure the construction of the said Canal, the contracting parties engage that, if any such Canal shall be undertaken upon fair and equitable terms by any parties having the authority of the local Government or Governments, through whose territory the same may pass, then the persons employed in making the said Canal and their property used, or to be used, for that object, shall be protected, from the commencement of the said Canal to its completion, by the Governments of the United States and Great Britain, from unjust detention, confiscation, seizure or any violence whatsoever.

ARTICLE IV.

The contracting parties will use whatever influence they respectively exercise, with any State, States or Governments possessing, or claiming to possess, any jurisdiction or right over the territory which the

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said Canal shall traverse, or which shall be near the waters applicable thereto; in order to induce such States, or Governments, to facilitate the construction of the said Canal by every means in their Power: and furthermore, the United States and Great Britain agree to use their good offices, wherever or however it may be most expedient, in order to procure the establishment of two free Ports,—one at each end of the said Canal.

ARTICLE V.

The contracting parties further engage that, when the said Canal shall have been completed, they will protect it from interruption, seizure or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said Canal may forever be open and free, and the capital invested therein, secure. Nevertheless, the Governments of the United States and Great Britain, in according their protection to the construction of the said Canal, and guaranteeing its neutrality and security when completed, always understand that, this protection and guarantee are granted conditionally, and may be withdrawn by both Governments, or either Government, if both Governments, or either Government, should deem that the persons, or company, undertaking or managing the same, adopt or establish such regulations concerning the traffic thereupon, as are contrary to the spirit and intention of this Convention,—either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandize or other articles. Neither party, however, shall withdraw the aforesaid protection and guarantee, without first giving six months notice to the other.

ARTICLE VI.

The contracting parties in this Convention engage to invite every State with which both or either have friendly intercourse, to enter into stipulations with them similar to those which they have entered into with each other; to the end, that all other States may share in the honor and advantage of having contributed to a work of such general interest and importance as the Canal herein contemplated. And the contracting parties likewise agree that, each shall enter into Treaty stipulations with such of the Central American States, as they may deem advisable, for the purpose of more effectually carrying out the great design of this Convention, namely,—that of constructing and maintaining the said Canal as a ship-communication between the

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two Oceans for the benefit of mankind, on equal terms to all, and of protecting the same; and they, also, agree that, the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such Treaty stipulations; and, should any differences arise as to right or property over the territory through which the said Canal shall pass—between the States or Governments of Central America,—and such differences should, in any way, impede or obstruct the execution of the said Canal, the Governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said Canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.

ARTICLE VII.

It being desirable that no time should be unnecessarily lost in commencing and constructing the said Canal, the Governments of the United States and Great Britain determine to give their support and encouragement to such persons, or company, as may first offer to commence the same with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this Convention; and if any persons, or company, should already have, with any State through which the proposed Ship-Canal may pass, a contract for the construction of such a Canal as that specified in this Convention,—to the stipulations of which contract neither of the contracting parties in this Convention have any just cause to object,—and the said persons, or company, shall, moreover, have made preparations and expended time, money and trouble on the faith of such contract, it is hereby agreed, that such persons, or company, shall have a priority of claim over every other person, persons or company, to the protection of the Governments of the United States and Great Britain, and be allowed a year, from the date of the exchange of the ratifications of this Convention, for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood, that if, at the expiration of the aforesaid period, such persons, or company, be not able to commence and carry out the proposed enterprize, then the Governments of the United States and Great Britain shall be free to afford their protection to any other persons, or company, that shall be prepared to commence and proceed with the construction of the Canal in question.

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ARTICLE VIII.

The Governments of the United States and Great Britain having not only desired in entering into this Convention, to accomplish a particular object, but, also, to establish a general principle, they hereby agree to extend their protection, by Treaty stipulations, to any other practicable communications, whether by Canal or rail-way, across the Isthmus which connects North and South America; and, especially, to the interoceanic communications,—should the same prove to be practicable, whether by Canal or rail-way,—which are now proposed to be established by the way of Tehuantepec, or Panama. In granting, however, their joint protection to any such Canals, or rail-ways, as are by this Article specified, it is always understood by the United States and Great Britain, that the parties constructing or owning the same, shall impose no other charges or conditions of traffic thereupon, than the aforesaid Governments shall approve of, as just and equitable; and, that the same Canals, or rail-ways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall, also, be open on like terms to the citizens and subjects of every other State which is willing to grant thereto, such protection as the United States and Great Britain engage to afford.

ARTICLE IX.

The ratifications of this Convention shall be exchanged at Washington, within six months from this day, or sooner, if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Convention, and have hereunto affixed our Seals.

Done, at Washington, the nineteenth day of April, Anno Domini, one thousand eight hundred and fifty.

JOHN M. CLAYTON [Seal]
HENRY LYTTON BULWER [Seal]

NOTES

While styled throughout its text and generally in the other papers of the time a convention, this famous agreement is now universally known as the Clayton-Bulwer Treaty. The words of the headnote descriptive of the purposes of the convention are those written in three of the treaty papers, namely, the United States instrument of ratification, the certificate of exchange, and the proclamation.

The papers in the treaty file include the signed original of the convention, the attested Senate resolution of May 22, the duplicate United States instrument of ratification of May 23, the certificate

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of the exchange of ratifications at Washington on July 4, and the original proclamation of July 5, 1850.

President Taylor died on July 9, 1850; his proclamation of the Clayton-Bulwer Treaty, four days earlier, was his last official act (see Richardson, V, 53–54). That paper was in this customary form:

By the President of the United States of America.

A PROCLAMATION.

Whereas a Convention between the United States of America and Her Britannic Majesty, for facilitating and protecting the construction of a ship canal between the Atlantic and Pacific Oceans, and for other purposes, was concluded and signed at Washington, on the nineteenth day of April last, which Convention is, word for word, as follows:

[Here follows the original treaty]

And whereas the said Convention has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Washington on the fourth instant, by John M. Clayton, Secretary of State of the United States, and the Right Honorable Sir Henry Lytton Bulwer, Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty, on the part of their respective Governments:

Now, therefore, be it known that I, Zachary Taylor, President of the United States of America, have caused the said Convention to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed. Done at the City of Washington, this fifth day of July, in the year of our Lord one thousand eight [Seal] hundred and fifty, and of the Independence of the United States the seventy-fifth.

Z. TAYLOR.

By the President:
J. M. CLAYTON.
Secretary of State.

THE RATIFICATIONS

The duplicate United States instrument of ratification in the treaty file, since it refers to the original of the convention as "hereunto annexed", is not in that respect strictly identic with the original ratification but otherwise shows the form thereof as follows:

Zachary Taylor, President of the United States of America,

To all and singular who shall see these presents, Greeting:

Whereas a Convention between the United States of America and Her Britannic Majesty, for facilitating and protecting the construction of a ship canal between the Atlantic and Pacific Oceans, and for other purposes, was concluded and signed at Washington, on the nineteenth ultimo, the original of which Convention is hereunto annexed: And whereas the Senate of the United States, by their resolution of the twenty-second instant—two-thirds of the Senators then present concurring—did advise and consent to the ratification of the said Convention:

Now, therefore, I, Zachary Taylor, President of the United States of America, having seen and considered the said Convention, do, in pursuance of the aforesaid advice and consent of the Senate, by these presents, accept, ratify, and confirm the said Convention, and every clause and article thereof, as the same are hereinafter set forth.

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In faith whereof, I have caused the seal of the United States to be hereunto affixed. Given under my hand, at the City of Washington, [Seal] this twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States the seventy-fourth.

Z. TAYLOR.

By the President:
JOHN M. CLAYTON,
Secretary of State.

It appears from the British instrument of ratification that the principle of the *alternat* was carefully observed in the signing of this convention, as in the text therein included Her Britannic Majesty is named first throughout and the indicated signature of the British Plenipotentiary is above that of the Plenipotentiary of the United States. The instrument is of this tenor (original in the file):

Victoria, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith &ca &ca &ca To All and Singular to whom these Presents shall come, Greeting! Whereas a Convention between Us and Our Good Friends The United States of America was concluded and signed at Washington, on the nineteenth day of April, in the Year of Our Lord One Thousand Eight Hundred and Fifty, by the Plenipotentiaries of Us and of Our said Good Friends, duly and respectively authorized for that purpose; which Convention is, word for word as follows:—

[Here follows the treaty text]

We having seen and considered the Convention aforesaid, have approved, accepted, and confirmed the same in all and every one of its Articles and Clauses, as We do by these Presents approve, accept, confirm, and ratify it for Ourselves, Our Heirs, and Successors:—Engaging and Promising upon Our Royal Word, that We will sincerely and faithfully perform and observe all and singular the Things which are contained and expressed in the Convention aforesaid, and that We will never suffer the same to be violated by any one, or transgressed in any manner, as far as it lies in Our Power. For the greater Testimony and Validity of all which, We have caused the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to these Presents, which We have signed with Our Royal Hand. Given at Our Court at Osborne House, in the Isle of Wight, the Eleventh day of June, in the Year of Our Lord One Thousand Eight Hundred and Fifty, and in the Thirteenth Year of Our Reign.

[Seal appendant] VICTORIA R.

THE FULL POWERS

In this case the original full powers were exchanged; that given to the Plenipotentiary of Great Britain is in the treaty file, reading as follows:

Victoria R.

Victoria, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith &ca &ca &ca To All and Singular to whom these Presents shall come Greeting! Whereas for the better treating of and arranging certain Matters which are now in discussion, or which may come into discussion, between Us and Our Good Friends the United States of America, We have judged it expedient to invest a fit Person with full Power to conduct such discussion on Our Part. Know Ye therefore, that We reposing especial Trust and Confidence in the Wisdom, Loyalty, Diligence, and Circumspection of Our Right Trusty and Well beloved Councillor Sir Henry Lytton Bulwer, Knight Commander of the Most Honourable Order of the Bath, Our Envoy Extraordinary and Minister Plenipotentiary to Our said Good Friends, have

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named, made, constituted, and appointed, as We do by these Presents name, make, constitute, and appoint him Our undoubted Commissioner, Procurator and Plenipotentiary: Giving to him all manner of Power and Authority to treat, adjust, and conclude, with such Minister or Ministers as may be vested with similar Power and Authority on the part of Our said Good Friends, any Treaties, Conventions, or Agreements that may tend to the attainment of the above-mentioned end, and to sign for Us and in Our Name, every thing so agreed upon and concluded, and to do and transact all such other matters as may appertain to the finishing of the aforesaid Work, in as ample manner and form, and with equal force and efficacy, as We Ourselves could do, if Personally Present:—Engaging and Promising upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said Commissioner, Procurator, and Plenipotentiary, shall be agreed to, acknowledged, and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as lies in Our Power. In Witness whereof We have caused the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to these Presents, which We have signed with Our Royal Hand. Given at Our Court at Buckingham Palace, the Sixth day of March, in the Year of Our Lord One Thousand Eight Hundred and Fifty, and in the Thirteenth Year of Our Reign.

[Seal appendant]

The full power given to Secretary of State Clayton was issued less than a fortnight before the signature of the convention, in this form (D.S., 3 Credences, 344):

Zachary Taylor, President of the United States of America,
To all to whom these presents shall come, Greeting!

Know Ye, That, for the purpose of confirming between the United States and Her Britannic Majesty perfect harmony and good correspondence, I have invested John M. Clayton, Secretary of State, with full power and authority, and also with general and special command, to meet and confer with Sir Henry Lytton Bulwer, accredited to this Government as Envoy Extraordinary and Minister Plenipotentiary of Her said Majesty, and with him to agree, treat, consult and negotiate of and concerning a ship canal between the Atlantic and Pacific Oceans by the way of the river San Juan de Nicaragua and Lakes Nicaragua and Managua, or either of them, and communications either by canal or railway across the Isthmus which connects North and South America, and concerning the States of Central America and the Mosquito Coast, and all matters and things connected with those subjects and to conclude and sign a Convention touching the premises, for my final ratification, with the advice and consent of the Senate of the United States, if such advice and consent be given.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed. Given under my hand, at the City of Washington,
(L.S.) the sixth day of April, in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States, the seventy-fourth.

Z. Taylor.

By the President:
John M. Clayton,
Secretary of State.

Proceedings in the Senate

The treaty was sent to the Senate with the following presidential message of April 22, 1850 (Executive Journal, VIII, 166–67):

I herewith transmit to the Senate for their advice, with regard to its ratification, a convention between the United States and Great Britain, concluded at Washington on the 19th instant, by John M. Clayton, Secretary of State, on the part of the United States and by the Right Honorable Sir Henry Lytton Bulwer, on the part of Great Britain.

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This treaty has been negotiated in accordance with the general views expressed in my message to Congress in December last.[1] Its object is to establish a commercial alliance with all great maritime states for the protection of a contemplated ship-canal through the territory of Nicaragua to connect the Atlantic and Pacific Oceans, and at the same time to insure the same protection to the contemplated railways or canals by the Tehuantepec and Panama routes, as well as to every other interoceanic communication which may be adopted to shorten the transit to or from our territories on the Pacific.

It will be seen that this treaty does not propose to take money from the public Treasury to effect any object contemplated by it. It yields protection to the capitalists who may undertake to construct any canal or railway across the Isthmus, commencing in the southern part of Mexico and terminating in the territory of New Granada. It gives no preference to any one route over another, but proposes the same measure of protection for all which ingenuity and enterprise can construct. Should this treaty be ratified it will secure in future the liberation of all Central America from any kind of foreign aggression.

At the time negotiations were opened with Nicaragua for the construction of a canal through her territory I found Great Britain in possession of nearly half of Central America, as the ally and protector of the Mosquito King. It has been my object in negotiating this treaty, not only to secure the passage across the Isthmus to the Government and citizens of the United States by the construction of a great highway dedicated to the use of all nations on equal terms, but to maintain the independence and sovereignty of all the Central American Republics. The Senate will judge how far these objects have been effected.

If there be any who would desire to seize and annex any portion of the territories of these weak sister Republics to the American Union, or to extend our dominion over them, I do not concur in their policy, and I wish it to be understood in reference to that subject that I adopt the views entertained, so far as I know, by all my predecessors.

The principles by which I have been regulated in the negotiation of this treaty are in accordance with the sentiments well expressed by my immediate predecessor, on the 10th of February, 1847, when he communicated to the Senate the treaty[2] with New Granada for the protection of the railroad at Panama. It is in accordance with the whole spirit of the resolution of the Senate of the 3d of March, 1835, referred to by President Polk, and with the policy adopted by President Jackson (immediately after the passage of that resolution), who dispatched an agent to Central America and New Granada "to open negotiations with those Governments for the purpose of effectually protecting by suitable treaty stipulations with them, such individuals or companies as might undertake to open a communication between the Atlantic and Pacific Oceans, by the construction of a ship-canal across the isthmus which connects North and South America, and of securing forever by such stipulations the free and equal right of navigating such canal to all such nations on the payment of such reasonable tolls as might be established, to compensate the capitalists who should engage in such undertaking and complete the work."

I also communicate herewith a copy of the correspondence between the American Secretary of State and the British plenipotentiary at the time of concluding the treaty. Whatever honor may be due to the party first proposing such a treaty justly belongs to the United States. My predecessor, in his message of the 10th of February, 1847, referring to the treaty with New Granada for the protection of the Panama Railroad, observes that "should the proposition be rejected we may deprive the United States of the just influence which its acceptance might secure to them, and confer the glory and benefits of being first among the nations in concluding such an arrangement upon the Government either of Great Britain or France. That either of these Governments would embrace the offer cannot well be doubted, because there does not appear to be any other effectual means of securing to all nations the advantages of this important passage but the guarantee of great commercial powers that the Isthmus shall be neutral territory. The interests of the world at stake are so important that the security of this passage

[1] See Richardson, V, 15–16.
[2] Of December 12, 1846 (Document 125).

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between the two oceans cannot be suffered to depend upon the wars and revolutions which may arise among different nations."

Should the Senate in its wisdom see fit to confirm this treaty, and the treaty heretofore submitted by me for their advice in regard to its ratification, negotiated with the State of Nicaragua on the 3d day of September last,[1] it will be necessary to amend one or both of them, so that both treaties may stand in conformity with each other in their spirit and intention. The Senate will discover by examining them both that this is a task of no great difficulty.

I have good reason to believe that France and Russia stand ready to accede to this treaty,[2] and that no other great maritime state will refuse its accession to an arrangement so well calculated to diffuse the blessings of peace, commerce, and civilization, and so honorable to all nations which may enter into the engagement.

The only papers transmitted with the message were two notes of the respective Plenipotentiaries (printed below) written on the date of signature of the treaty (see Blue Book, 1856, "Correspondence with the United States Respecting Central America", 211; that publication is hereinafter cited as "Blue Book, 1856"); there was the usual reference to the Committee on Foreign Relations and order to print; another message of President Taylor, of May 8 (received May 9), communicated two diplomatic notes of April 29 and 30 respectively (printed in *ibid.*, 212; also in Manning, Diplomatic Correspondence of the United States, 1831–1860, VII, 391–92, 60–61); on May 20 the treaty was reported from committee "without amendment"; on May 22 the treaty was considered and the resolution of advice and consent in simple form was adopted, yeas 42, nays 11 (see Executive Journal, VIII, 166–67, 168, 173, 174, 185, 186); the vote by parties was 23 Whigs, 17 Democrats, and 2 Free-Soilers in the affirmative, and 11 Democrats in the negative, with 2 Whigs and 5 Democrats absent.[3]

The only day on which the treaty was considered in the Senate was May 22; the period of debate was, it seems, quite brief (see Congressional Globe, XIX, pt. 2, 1045, May 22, 1850, "some time"; also Executive Journal, VIII, 186, and Senate Journal, 31st Congress, 1st session, serial 548, pp. 347–50).

The paucity of discussion on the floor of the Senate was doubtless due to the fact that Senators had been consulted on the text during the negotiations; various participants later remarked on this; for example, Senator Lewis Cass, of Michigan, said on January 6, 1853, that "a great majority of both parties were consulted in the progress of the treaty" (Congressional Globe, XXII, 238; and see the letter of Senator William Rufus King, of Alabama, of May 8, 1850, in Moore, Works of James Buchanan, VIII, 381–82); the British Plenipotentiary, Sir Henry Lytton Bulwer (afterwards Lord Dalling and Bulwer) wrote on April 16, 1850, of the "exertions we [himself and Secretary of State Clayton] have made to obtain the

[1] The message of March 19, 1850, submitting to the Senate the treaty with Nicaragua of September 3, 1849, is printed below with some account of the papers then sent to the Senate and with some discussion of the treaty then submitted.

[2] See below, under the heading "Article 6".

[3] Here and elsewhere, party affiliations are as given in Congressional Globe, XIX, pt. 1, 1, December 1849, taking account of later changes in membership.

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opinions and support of Senators" (Library of Congress, facsimiles from the Public Record Office, London, Foreign Office Records, vol. 5:512, despatch No. 64; citations herein of Foreign Office papers refer to facsimiles thereof in the Library of Congress).

The Exchange of Ratifications

The certificate of the exchange of ratifications is in this form (cf. Blue Book, 1856, 61):

The Undersigned having met together for the purpose of exchanging the ratifications of a Convention between the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, for facilitating and protecting the construction of a ship canal between the Atlantic and Pacific Oceans, and for other purposes; which Convention was concluded and signed at Washington on the nineteenth day of April last; and the ratifications of the said Instrument having been carefully perused, and found to be exactly conformable to each other, the said exchange took place this day in the usual form.

In witness whereof, they have signed the present certificate of exchange, and have affixed thereto their seals.

Done at Washington, the fourth day of July in the year eighteen hundred and fifty.

John M. Clayton [Seal]
H. L. Bulwer [Seal]

In connection with the exchange of the ratifications, but five days prior thereto, the following declaration of the British Plenipotentiary, Sir Henry Lytton Bulwer, was delivered on Saturday, June 29, 1850 (D.S., 27 Notes from the British Legation):

Declaration.

In proceeding to the exchange of the Ratifications of the Convention signed at Washington on the 19th of April 1850 between Her Britannick Majesty and the United States of America, relative to the establishment of a communication by ship canal between the Atlantic and Pacific Oceans, The undersigned, Her Britannick Majesty's Plenipotentiary, has received Her Majesty's instructions to declare, that Her Majesty does not understand the engagements of that Convention to apply to Her Majesty's settlement at Honduras or to its Dependencies.

Her Majesty's Ratification of the said convention is exchanged under the explicit Declaration abovementioned.

Done at Washington the 29th day of June, 1850.

H. L. Bulwer

The foregoing declaration is written on the first recto and the first verso of a single sheet of paper, once folded; a notation at the head of the declaration gives the date of receipt (June 29) at the Department of State; in the dating clause of the declaration, "29th" and "June" are written over erasures[1] in a hand which is not that of the wording generally; on the second verso of the paper is written the following signed memorandum of Secretary of State Clayton:

[1] The experts of the National Bureau of Standards were unable in 1936 to reconstruct the erased writing (letter of Director Lyman J. Briggs, November 9, 1936).

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Memorandum

DEPARTMENT OF STATE
Washington July 5. 1850

The within declaration of Sir H. L. Bulwer was received by me on the 29th day of June 1850. In reply I wrote him my note of the 4th of July acknowledging that I understood British Honduras was not embraced in the treaty of the 19th day of April last, but at the same time carefully declining to affirm or deny the British title in their settlement or its alleged dependencies. After signing my note last night I delivered it to Sir Henry & we immediately proceeded without any further or other action to exchange the ratifications of said treaty. The blank in the declaration was never filled up. The consent of the Senate to the declaration was not required and the treaty was ratified as it stood when it was made.

JOHN M. CLAYTON.

N.B. The rights of no Central American state have been compromised by the treaty or by any part of the negotiations

In the foregoing memorandum of Clayton, the sentence "The blank in the declaration was never filled up" is, in pencil, both bracketed and scored; the quoted words do not appear in the copy of the memorandum which is in D.S., 7 Notes to the British Legation, 254, following the record copy of the note of Clayton to Bulwer of July 4 (quoted below) and the copy of the declaration "subjoined" thereto;[1] and they are not in the text of the memorandum as later printed officially (cited below). It is clear that the statement regarding the "blank" means that the dating clause of the declaration was, not only when that paper was delivered (June 29), but also when Clayton signed his memorandum thereon, six days later, incomplete as to the month and the day; from the erasures where "29th" and "June" are written in the declaration, one may perhaps infer that a clerk, assuming that the declaration should bear even date with the certificate of exchange, had first inserted "4th" and "July", for which the earlier dating was later substituted; and possibly the reason for that later substitution was that the replying note of Bulwer dated July 4 (printed below) refers to the declaration as dated June 29.

The note of Clayton of July 4, 1850, is in these terms (*ibid.*, 251–53):

DEPARTMENT OF STATE,
Washington, July 4, 1850.

To the Right Honorable Sir HENRY L. BULWER,
&c, &c, &c

SIR: I have received the declaration you were instructed by your Government to make to me, respecting Honduras and its dependencies, a copy of which is hereto subjoined.

The language of the 1st article of the Convention concluded on the 19th day of April last, between the United States and Great Britain, describing the country not to be occupied, &c, by either of the parties, was, as you know, twice approved by your Government; and it was neither understood by them, nor by either of us, (the negotiators,) to include the British settlement in Honduras, (commonly called British Honduras, as distinct from the State of Honduras,) nor the small islands in the neighborhood of that settlement, which may be known as its dependencies. To this settlement and these islands, the treaty we negotiated

[1] In the archives volume cited, the copy of the declaration is followed by a copy of the memorandum of Clayton of July 5; but there is every reason for believing that that memorandum was not communicated to Bulwer.

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was not intended by either of us to apply. The title to them it is now and has been my intention, throughout the whole negotiation, to leave, as the treaty leaves it, without denying, affirming, or in any way meddling with the same, just as it stood previously. The Chairman of the Committee on Foreign Relations of the Senate,[1] the Honble William R. King, informs me that "the Senate perfectly understood that the treaty did not include British Honduras". It was understood to apply to and does include all the Central American States of Guatemala, Honduras, San Salvador, Nicaragua, and Costa Rica, with their just limits and proper dependencies. The difficulty that now arises seems to spring from the use, in our Convention, of the term "Central America" which we adopted because Viscount Palmerston had assented to it and used it as the proper term, we naturally supposing that, on this account, it would be satisfactory to your Government; but, if your Government now intend to delay the exchange of ratifications until we shall have fixed the precise limits of Central America, we must defer further action until we have further information on both sides, to which at present we have no means of resort, and which it is certain we could not obtain before the term fixed for exchanging the ratifications would expire. It is not to be imagined that such is the object of your Government; for not only would this course delay, but absolutely defeat the Convention.

Of course, no alteration could be made in the Convention as it now stands, without referring the same to the Senate; and I do not understand you as having authority to propose any alteration. But, on some future occasion, a conventional article, clearly stating what are the limits of Central America, might become advisable.

There is another matter still more important, which the stipulations of the Convention direct that we shall settle, but which you have no instructions now to determine; and I desire you to invite the attention of your Government to it—"the distance from the two ends of the canal" within which "vessels of the United States or Great Britain, traversing the said canal, shall, in case of war between the contracting parties, be exempted from blockade, detention, or capture by either of the belligerents". The subject is one of deep interest; and I shall be happy to receive the views of your Government in regard to it, as soon as it may be convenient for them to decide upon it.

I renew to you, Sir, the assurances of the distinguished consideration with which I have the honor to be your obedient servant,

JOHN M. CLAYTON.

Prior to the writing of the foregoing note of Clayton, but on the day of its date, the following correspondence was had between the Secretary of State and the Chairman of the Senate Committee on Foreign Relations, William Rufus King, of Alabama (Blue Book, 1856, 208):

[*Mr. Clayton to Mr. King*]

I am this morning writing to Sir H. L. Bulwer, and while about to decline altering the Treaty at the time of exchanging ratifications, I wish to leave no room for a charge of duplicity against our Government, such as that we now pretend that Central America in the Treaty includes British Honduras.

I shall therefore say to him, in effect, that such construction was not in the contemplation of the negotiators or the Senate at the time of confirmation. May I have your permission to add that the true understanding was explained by you, as Chairman of Foreign Relations, to the Senate, before the vote was taken on the Treaty? I think it due to frankness on our part.

[1] During the consideration of the Clayton-Bulwer Treaty in the Senate, the members of the committee were William Rufus King, of Alabama, Henry S. Foote, of Mississippi, David R. Atchison, of Missouri, Daniel Webster, of Massachusetts, and Willie P. Mangum, of North Carolina; the two last named were of the Whig or administration party. At the time the Senate was composed of 33 Democrats, 25 Whigs, and 2 Free-Soilers.

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[*Mr. King to Mr. Clayton*]

The Senate perfectly understood that the Treaty did not include British Honduras. Frankness becomes our Government, but you should be careful not to use any expression which would seem to recognise the right of England to any portion of Honduras.

The memorandum of Clayton of July 5 states that the exchange took place "immediately" after the delivery of Clayton's note of July 4; this can be accepted as sufficient evidence to show that *at that time* there was no answering note from Bulwer; the letter of George P. Fisher [1] of May 21, 1856 (quoted later), is to the same effect; so when the exchange took place the papers making up the record (apart from the certificate of exchange) were the British declaration of June 29 and the American note of July 4. The actual hour of the exchange ("last night" in the memorandum of July 5) was, it appears, well on in the morning of July 5, "about the break of day", as Clayton wrote some years later; the place was Clayton's residence; [2] and the memorandum of July 5 was written just after the exchange took place (see the mentioned letter of Fisher of May 21, 1856; the draft letter of Clayton to Marcy of May 21, 1856, which is quoted below; and Clayton's remarks in the Senate on June 19, 1856, in Congressional Globe, XXV, pt. 2, 1419, col. 3).

In D.S., 27 Notes from the British Legation, bound in its proper order, is an answering note of Bulwer; that note is dated July 4, 1850; but the "4" is written in part over an erasure; it appears that the scrivener started to write a "5" but changed to a "4" before the figure was completed. It was a practice of the Department of State at the time that on incoming papers should be written (sometimes in pencil, sometimes in ink) a notation of the date of receipt; but in numerous cases, of which this note is one, that practice was not followed. In the opening phrase of the Bulwer note, there are words written over erasures, namely, from "understand" to "June" (the first "the" only in part) and "in behalf of Her Majesty's Government to be"; the language first penned has not been deciphered; [3] the words over erasures were written by a scrivener other than the one who wrote all the rest of the note, but comparison of papers shows that each of them was of the British Legation. The text of that note, the regularity of which is discussed later at some length, follows:

BRITISH LEGATION *July 4. 1850*

SIR, I understand the purport of your answer to the declaration dated the 29th June which I was instructed to make to you in behalf of Her Majesty's Government to be—That you do not deem yourself called upon to mark out at this time the exact limits of Her Majesty's settlement at Honduras, nor of the different Central American States, nor to define what are or what are not the dependencies of the said settlement; but that you fully recognise that it was not

[1] Fisher, a friend of Clayton and from April 12, 1849, to June 30, 1850, a clerk in the Department of State, was present at the exchange and wrote the body of the Clayton memorandum of July 5.

[2] Perhaps because of the national holiday.

[3] The experts of the National Bureau of Standards were unable in 1936 to reconstruct the erased writing (letter of Director Lyman J. Briggs, November 9, 1936).

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the intention of our negotiation to embrace in the Treaty of 19th April whatever is Her Majesty's settlement at Honduras, nor whatever are the Dependencies of that settlement, and that Her Majesty's title thereto subsequent to the said Treaty will remain just as it was prior to that Treaty, without undergoing any alteration whatsoever in consequence thereof. It was not the intention of Her Majesty's Government to make the declaration I submitted to you more than a simple affirmation of this fact, and consequently I deem myself now authorised to exchange Her Majesty's Ratification of the Treaty of 19th of April for that of the President of the United States.

I shall take the earliest opportunity of communicating to Her Majesty's Government, the desire which you express to have determined the distance from the two ends of the Canal within which vessels of the United States or Great Britain traversing the said Canal shall in case of war between the Contracting Parties be exempted from blockade, detention, or capture by either of the belligerents and I will duly inform Her Majesty's Government of the interest which you take in this question.

I avail myself of this opportunity to renew to you the assurance of my highest consideration.

H L Bulwer

Bulwer's report to Palmerston on the delivery of the declaration and the correspondence at the time of the exchange, was made by his secret and confidential despatch No. 157, of August 6, 1850, wherein he wrote (F.O. 5 : 514):

I had intended to give Your Lordship before now some explanations as to the manner in which Mr Clayton received the declaration relative to Her Majesty's settlement at Honduras, at the time of exchanging the Ratifications of the Convention of the 19th of April; but I have been so severe a sufferer from indisposition for the last month as to have been almost unable to attend to business, though I have endeavoured to keep Your Lordship tolerably well informed of whatever it seemed most urgent that you should be acquainted with.

I think it well however that Your Lordship should now know something,—more especially as the Secretary of State has since been changed, and Mr King who was Chairman of the Committee on Foreign Affairs in the Senate has become President of the Senate, and consequently no longer retains his former situation,—of the impressions under which Mr Clayton's counter declaration was written, and of the nature of the objections which I had to remove.

Although the terms used in our Treaty did not expressly specify Her Majesty's settlement at Honduras, because Mr Clayton and myself, in constructing a Treaty at a particular crisis, and without Your Lordship's authority, wished to employ, as far as it was possible, the expressions which Your Lordship had either used or agreed to in your correspondence with Mr Lawrence[1] in November last; It was nevertheless stated by me, and clearly understood by Mr Clayton, that neither British Honduras nor its dependencies were included in the Convention; and neither of us considered that the terms which we adopted as having been employed by Your Lordship, did fairly comprehend the British possessions in question;—consequently, there would have been no difficulty in placing the substance of the declaration in the body of the Treaty; but this not having been suggested when the Treaty was approved of, but coming afterwards, and being couched in rather vague terms, gave rise apparently in Mr Clayton's mind to very unfounded suspicions. He seemed to apprehend that Great Britain under the wording "Her Majesty's settlement at Honduras and its dependencies" might mean to extend her claim over the whole or any part of Honduras.

Nor was this all: Had the Treaty really signified the abrogation of Her Majesty's rights in Honduras, it would have been impossible for Mr Clayton to have accepted the declaration of Her Majesty's Government excepting Honduras from the said Convention without appealing to the Senate by whom the Treaty had been already passed.

[1] Here and elsewhere the correct spelling of the name of Abbott Lawrence is printed.

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But as I have had on more than one occasion reason to observe, the late Cabinet was placed in a very peculiar position with respect to the Senate, not having a majority in that assembly.

It is true that by very great personal exertions on my part and that of Mr Clayton this difficulty had been for a moment overcome, and a considerable majority obtained for the arrangement between our two Countries which we had conjointly framed; But as it frequently happens in similar cases, the vote of this majority had no sooner been given than there was a certain reaction against it.

In this state of things to have resubmitted the Treaty to the Treaty making power on the ground that England had insisted upon a change in it, would have aided the reaction just described, and produced a complete revulsion in public opinion.

Thus Mr Clayton said if the Treaty requires no change in it your declaration is, as I believe it is, wholly unnecessary; If on the contrary the Treaty does require a change, then the declaration comes too late: The Senate has given its sanction to the measure as it is; and to bring it before that body again at this season in order to secure some additional advantage very vaguely defined in favour of one of the Parties will be to lose it; and to create an opposition on that very point, which you wish to be and which I consider to be now settled.

With these and like observations the late Secretary of State was at first disposed to decline receiving Her Majesty's Government's declarations altogether, although he acknowledged the fact which the declaration was meant to assert; and for my part I might have been inclined to alter the separate declaration that British Honduras and its dependencies were not included in our Treaty, into a joint declaration stating to what States or Territories the Convention did actually apply. In this shape Mr Clayton agreed with me that the exception which Your Lordship wished expressly to establish might be made indirectly without exciting observation, and consequently without meeting opposition in the Senate or elsewhere.

This however could not have been done after Your Lordship's special Instructions without further reference to Your Lordship. Further reference would have been further delay. The cause for such delay would not have remained for one moment secret. The newspapers had indeed already begun stating that difficulties of some kind as to the conclusion of the Treaty had arisen, and it became manifest that if the exchange of Ratifications was postponed, with the knowledge that this was because the British Government had made some declaration which the United States could not agree to, such exchange would never take place.

A conviction of this truth forced itself at last upon Mr Clayton's mind, and prevailed upon him to write the note which I had the honour to inclose in my despatch No 126.[1]

The foregoing observations will explain why this note is longer than would appear necessary; why it defines in some degree what Mr Clayton understands to be Her Majesty's settlement in Honduras and its dependencies, and why Mr Clayton takes pains to bring forward, without any very clear reason for so doing, the assertion of the fact that if any alteration of the Convention were required, he should be obliged to go to the Senate for it, thereby leaving it to be understood that the declaration made to him and his acquiescence in it, is not an alteration of the Treaty, but a just specification of its meaning and intentions.

It was in order to make the purport of this note clear and satisfactory that I replied to it: after which reply there could be no mistake on one side or the other.

The present appears to me the best moment for calling Your Lordship's attention to a question which a portion of Mr Clayton's communication suggests.

The term "Central America" though used by Mr Clayton and myself in our Convention, for the reasons set forth at the commencement of this despatch is still doubtless a somewhat vague term.

The usual acceptation given to it here would simply embrace the five States, vizt Honduras, Guatemala, Salvador, Nicaragua and Costa Rica, which formerly constituted the Central American Republic.

I do not agree with Mr Clayton in thinking it necessary to state precisely what the boundaries of these five states are in order to determine the extent of Central America; But I think it might be adviseable that the two Governments came to a clear understanding as to whether they mean that the five States in

[1] The note dated July 4, 1850, printed above.

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question with their just boundaries, whatever those boundaries may be, are meant by the term Central America, or whether it is intended in this term, to comprize any portion of Mexico or of New Granada; and if so, what portion of either or both these States is so comprized.

As has been seen, there is no mention of the declaration of June 29, 1850, in the certificate of the exchange of ratifications; and there is no reference to the declaration in the proclamation of the treaty. The respective instruments of ratification were of earlier date than the declaration; and neither the declaration nor the notes of July 4 were laid before the Senate, although the first session of the Thirty-first Congress was then holding and did not terminate until September 30, 1850.

The treaty was communicated to the House of Representatives with the message of President Fillmore of July 18, 1850 (House Executive Document No. 75, 31st Congress, 1st session, serial 579; hereinafter cited as "House Document No. 75"); the accompanying papers were numerous; the document is of 328 pages, with five maps; but therein is no mention of the declaration of June 29, 1850, or of any correspondence relevant thereto, although in the transmitted report of Clayton of the same date as the message there is this paragraph (*ibid.*, 8; no manuscript copy of that report of more than seven printed pages has been found in the archives of the Department of State):

A copy of the treaty concluded between Great Britain and the United States in regard to Central America is herewith submitted. Its engagements apply to all the five States which formerly composed the republic of Central America and their dependencies, of which the island of Tigre was a part. It does not recognise, affirm, or deny the title of the British settlement at Belize, which is, by the coast, more than five hundred miles from the proposed canal in Nicaragua. The question of the British title to this district of country, commonly called British Honduras, and the small islands adjacent to it claimed as its dependencies, stands precisely as it stood before the treaty. No act of the late President's administration has in any manner committed this government to the British title in that territory, or any part of it.

The treaty was communicated to Parliament on August 15, 1850, but without the declaration, which seems to have been withheld merely because no exact copy thereof was then available at London; the question was discussed by Viscount Palmerston and Henry U. Addington, of the Foreign Office, at the time (see the memoranda with despatch No. 126, of July 8, 1850; F.O. 5:513). In the despatch cited, Bulwer had written of the exchange of ratifications and had enclosed copies of the two notes of July 4 but not of the declaration (see Blue Book, 1856, 63–65); the Foreign Office had the draft thereof previously sent to Bulwer, but this was, of course, without date or signature (*ibid.*, 60).

As early as August 17, 1850, Bulwer suggested that the declaration of June 29 be communicated to the Senate; he then wrote as follows in an informal note to Secretary of State Webster (D.S., 27 Notes from the British Legation; for the note and enclosure thereto in full, see Manning, *op. cit.*, VII, 406–8):

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I send you herewith privately an extract from a memorandum I kept for my own use, relative to the negociation which terminated in the treaty of the 19th April, and the matters which that treaty still leaves undecided.

. . . . . .

Whilst on the subject of the Senate, I may mention that it seems to me that the notes[1] exchanged between myself and Mr Clayton previously to signing the treaty, as well as the Declaration respecting British Honduras previous to the Ratification, might as well be laid before that body.

The opening paragraphs of the enclosure to the foregoing note, which are now to be quoted, indicate that the declaration of June 29 was deemed at the time to be relevant not only to British Honduras but also to the Bay Islands (Islas de la Bahía):

On the 28th June Sir H. Bulwer received Her Majesty's authorisation to exchange the ratifications of the treaty signed the 19th April.

At the same time he was instructed to make a declaration[2] that Her Majesty did not intend by this Convention to abandon any right which she possessed over H.M's settlement of Honduras and its dependencies.

It is well here to observe that when Mr Clayton and Sir Henry Bulwer conceived themselves called upon to settle the disagreeable questions which had arisen with respect to the Construction of a Canal through the Nicaraguan and Mosquito territory by a treaty, they deemed it adviseable, as Sir H. Bulwer had no special instructions upon this subject, to adopt, as far as this could be done, those terms which Lord Palmerston and Mr Lawrence had used upon the same subject in their private Correspondence of November 1849. They had not therefore given any definition of their own as to the term "Central America" nor gone into other details which, had no correspondence passed between Lord Palmerston and Mr Lawrence they might have deemed it expedient to advert to. But Sir H. Bulwer told Mr Clayton that he considered British Honduras and its dependencies including two Islands called Ruatan and Bonaca, excluded from this treaty: and Mr Clayton had fully acceded to such exception as a matter of course;[3] and Mr King, the chairman of the Committee on Foreign Relations in the Senate had stated to the Senate that the terms of the Convention did not apply to British Honduras.

The treaty, indeed, was intended to apply to future and not present possessions[4] in Central America; so that without any question as to what Central America is, H.M's settlement in Honduras and its dependencies are not included in the said treaty. Accordingly, Mr Clayton fully acceded to the principle of the declaration of HM's Govt. He seemed however to apprehend that Gt Britain might make use of his assent to this declaration, by claiming *any portion* of Honduras as part of HM's settlement and its dependencies; and his answer tho' perfectly satisfactory as to the real object which H.M's Govt had in view, is guarded by this unfounded suspicion; so that while he acknowledges that the Convention of the 19th April, does not touch any right which H.M's Govt possessed previously in Honduras, he does not pretend to decide what those rights are or over what particular territories they extend.

Sir H. Bulwer's answer states what the intentions of H.M's Govt really were and accepts Mr Clayton's assent to the declaration he was instructed to make, as satisfactory, with respect to those views which were far from embracing any covert design to extend the British possessions in Honduras beyond the limits which have hitherto been assigned to them.

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[1] Those two notes of April 19, 1850, are printed below; they had been communicated to the Senate with the treaty.

[2] Marginal note: "Would it not be well that this were laid before the Senate?"

[3] With this sweeping statement compare the wording of Clayton's note of July 4, 1850, answering the British declaration; and see *infra*, under the heading "The Correspondence Regarding Roatan".

[4] This contention is here for the first time communicated in writing to the Government of the United States. The divergent views on the point put forward during 1853–56 are referred to below, under the heading "Some Later Treaties".

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Not wholly consistent with the foregoing are the following paragraphs from a letter written to Clayton on December 30, 1853, by Reverdy Johnson, who was Attorney General in the Cabinet of Taylor at the time of the negotiation of the Clayton-Bulwer Treaty (Senate Executive Document No. 13, 33d Congress, 1st session, serial 694, pp. 14–19):

As to the declaration of Sir Henry L. Bulwer, and the counter declaration [1] made by you at the time of the exchange of ratifications, I probably had a better opportunity of understanding the views and objects of both of you than any other. I assisted, by your request, in the arrangement of the phraseology of the counter declaration, dated the fourth of July, 1850, to Sir Henry L. Bulwer's declaration of the 29th of June. By your request, also, I examined Sir Henry L. Bulwer's powers, and conversed with him freely and fully on the whole subject, at the very moment when, in consequence of his declaration, you threatened to break off the whole negotiation.

I remember well that after his declaration was received, there was a period when you had resolved to abandon the treaty in consequence of it; but when Sir Henry consented to receive your counter declaration of the fourth of July, in which you expressly limited the term "her Majesty's settlement at Honduras," to that country which is known as British Honduras, as contra-distinguished or distinct from the state of Honduras, and also confined the word "dependencies" in his declaration to those "small islands" *known at the time to be such;* in which also, while admitting Belize or British Honduras not to be included in the treaty, you disavowed all purpose of admitting any British title even there; in which, too, you declared that the treaty did include "all the Central American States within their just limits and proper dependencies," and in which you expressly stated to him that no alteration could be made in the treaty without the consent of the Senate, and that he was understood as not even proposing any such alteration,—you then consented to exchange upon that counter declaration, which, in your judgment, and in mine too, completely annulled every pretext for asserting that the declarations of the negotiators had altered the convention, or fixed an interpretation upon it contrary to the meaning of the President and Senate. We both considered then, and as a jurist I now hold it to be perfectly clear, that the exchange of the ratifications on that counter declaration was, on the part of the British minister, a complete waver of every objection that could be taken to any statement contained in it.

In point of law, the declarations of the negotiators, not submitted to the Senate, were of no validity and could not affect the treaty. Both understood that. This government had decided that question in the case of the Mexican protocol,[2] and the British government was officially informed of their decision. The very power to exchange ratifications gave them the same information, and it is absolutely impossible that the British minister could have been deceived on that subject.[3]

. . . . . .

With regard to the British colony said to have been established on the 17th of July, 1852, in the islands of Ruatan, Bonacca, Utilla, Barbarat, Helena, and Morat, and designated as the colony of the Bay of Islands, the question whether, by establishing such a colony, Great Britain has violated the treaty of 1850, depends entirely upon facts in regard to which there are different opinions. The only islands known to this government on the 4th of July, 1850, to be dependencies of British Honduras or Belize, were those referred to in the fourth

[1] By "the counter declaration" is meant the note of Clayton of July 4, 1850; that paper, while often called a "counterdeclaration", was strictly a note, and was not in form a declaration.

[2] The protocol of Querétaro of May 26, 1848 (see the notes to Document 129). The question of law in the case of that protocol was very different from the one here.

[3] The conditional exchange of the British instrument of ratification is ignored here; and Bulwer's note of July 4, 1850, of which Johnson was perhaps unaware, is not mentioned.

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and fifth articles of the treaty [1] of London of the 14th of July, 1786. The fourth article provides that "the English shall be permitted to occupy the small island known by the names of Casina, St. George's Key, or Cayo Cafina," and by the fifth article, they "have the liberty of refitting their merchant ships in the southern triangle included between the point of Cayo Cafina and the *cluster of small islands* which are situated opposite that part of the coast occupied by the cutters, at the distance of eight leagues from the river Wallis, seven from Cayo Cafina, and three from the river Sibun, a place which has always been found well adapted for that purpose. For which end, the edifices and storehouses absolutely necessary for that service shall be allowed to be built." These articles in the treaty of 1786 give us the only knowledge of any small islands, which were, on the 4th of July, 1850, "dependencies" of British Honduras. I repeat, that the counter declaration acknowledges no other dependencies of British Honduras but those small islands which were *known* to be such at its date. We knew, indeed, that Great Britain as well as Honduras had laid claim to Ruatan, but we had no information as to the ground on which the former rested her claim. Your reply to Sir Henry L. Bulwer avoided any recognition of the British claim to it, or other allusion to it than could be inferred from the positive assertion that the treaty did include all the Central American States "with their just limits and proper dependencies." If these islands were a part of any Central American State at the time of the treaty, the subsequent colonization of them by Great Britain is a clear violation of it. If, on the other hand, they did not then belong to any Central American State, it would be gross injustice on our part to pretend that the treaty did include them. My impression is, that Ruatan belongs to the State of Honduras, but my knowledge of the facts is too limited to enable me to express it without diffidence.

Not until January 4, 1853, was the declaration of June 29, 1850, communicated to the Senate (Senate Executive Document No. 12, 32d Congress, 2d session, serial 660); accompanying papers were the note of Clayton of July 4, 1850, and his memorandum of July 5; but the answering note of Bulwer of July 4 was neither communicated nor made available by either Government until it was printed in Blue Book, 1856 (pp. 64–65).

Debates in the Senate ensued upon the presidential message of January 4, 1853; these were continued during the special session of the Senate (March 4–April 11, 1853) which followed the close of the Thirty-second Congress; and there were further speeches in January 1854, at the first session of the Thirty-third Congress (see Congressional Globe, XXII, 237–38, 247–53, 266–72; *ibid.*, appendix, 246–90, *passim; ibid.*, XXIII, appendix, 61–72, 89–103). During those debates, however, the following relevant papers were unknown to the Senate: the withdrawn note of Bulwer of April 15, 1850 (quoted below); the private note of Clayton of April 24, 1850 (also quoted below); the note of Bulwer of July 4, 1850 (printed above); Bulwer's informal note to Webster of August 17, 1850, and the enclosure thereto (printed in part above); although, of course, Clayton himself, who participated in those debates after he once more became a Senator from Delaware (March 4, 1853), knew of the first two of those papers; his later denial of knowledge of the Bulwer note of July 4, 1850, is discussed below. It was at the outset of those debates that the Clayton-King correspondence of July 4, 1850 (printed above), was made known.

[1] For the French text and an English translation of this convention between Great Britain and Spain, see British and Foreign State Papers, I, pt. 1, 654–63.

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Bulwer's Note of July 4, 1850

No doubt or suspicion of the Bulwer note of July 4, 1850, has ever been officially expressed; for decades after its first publication in Blue Book, 1856 (pp. 64–65), it was accepted as part of the correspondence at the exchange of ratifications of the Clayton-Bulwer Treaty; but more recently that note has been the subject of discussion by historians. First to raise question was Bigelow (Breaches of Anglo-American Treaties, published in 1917), who, after examination of only part of the evidence, calls the note "bogus" and "spurious" and says that it "was smuggled into the archives of our Department of State" (pp. 124–25; the argument is at pp. 121–38). In American Secretaries of State and Their Diplomacy, VI (published in 1928), Miss Williams writes that whether Clayton accepted the Bulwer note of July 4, 1850, "is uncertain", and that "evidently after Clayton resigned office,[1] a copy [2] found its way into the State Department archives"; but that author finds it "hard to avoid the conclusion that Clayton did accept the counter-statement, but kept the fact secret for a time by not filing it with the other papers connected with the negotiation" (p. 69). A detailed and learned account is that of Ward, in Cambridge Historical Journal, III, 304–13, who finds it "impossible to avoid the conclusion that Bulwer's declaration of 4 July was inserted in the American archives without Clayton's knowledge" and that "internal evidence shows that this insertion took place within a few days, at most, of the exchange of ratifications", but considers that the "case against Bulwer is still not proven".[3]

Before considering the case on the Bulwer note of July 4, 1850, pro and con, the issue should be defined. The date of the note (July 4 and not 5) and its tenor ("I deem myself now authorised to exchange Her Majesty's Ratification") imply that delivery of the note was made upon, or just prior to, the exchange, which took place about daybreak on July 5; but it is as certain as can be that at the time of the exchange the Bulwer note was not delivered and almost as certain that it was then not even written; so to the extent mentioned the note, on its face, is disingenuous; and *to that extent* the record is a misleading one.

We know, however, that a replying note from Bulwer had been contemplated; George P. Fisher, a partisan of Clayton, writes of the events of that night: "A long discussion ensued between you respecting the propriety of his making and your receiving another note from him in reply to your counterdeclaration; but I saw none and I knew of no other at that time";[4] and Clayton's own words in his memorandum of the early morning of July 5 show that he was thinking of the replying note which had been proposed by Bulwer; Clayton writes that

[1] I.e., after July 22, 1850.

[2] This must mean the original.

[3] See also Baty, "A Page of Pacific Canal History", in International Law Notes, III, 93–96, July 1918; therein are considered the allegations of Bigelow but not the relevancy of the wording of Bulwer's note of July 4, 1850, to the matter of the Bay Islands.

[4] The words "at that time" sharply limit the extent of Fisher's knowledge.

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after delivery of his own note "we immediately proceeded without any further or other action to exchange the ratifications"; there had not then taken place "any further or other action", namely, delivery of such replying note as had been the subject of the previous "long discussion". Moreover, there is nothing in the writings of Fisher and Clayton in 1856, which are presently to be quoted, which denies that Bulwer stated, as he may have done, that a replying note would be delivered *after* the exchange.

The real issue on the replying note of Bulwer is thus not whether it was delivered with the exchange, for it was not. The issue is whether it was duly delivered later during the same day [1] of July 5 or, on the other hand, whether it was delivered in some manner or at some later date so that Clayton was designedly kept ignorant of it.

On that issue the letter of Fisher to Clayton dated at Washington May 21, 1856, gives no aid to the case against the note; Fisher's part in the matter ended when he handed over the papers in his charge at the Department of State in the morning of July 5; Fisher had already resigned his clerkship in the Department (June 30) to accept another post; [2] in his letter are expressed suspicions of later events but no pretense of knowledge; as has been said, the letter of Fisher is of real weight in limiting the issue to the time subsequent to the hour of the exchange, but no more than that. The text of the letter follows (Library of Congress, 11 Clayton Papers, 2201–4; the papers of Clayton in the Library of Congress are hereinafter cited "Clayton Papers"):

In compliance with your wish expressed last evening at your lodgings I proceed to give you in writing my recollection of what transpired at your residence on the night of July 4th and on the morning of July 5th 1850, in regard to the exchange of ratifications between yourself and Sir Henry L. Bulwer (the British negotiator) of the treaty of the 19th of April 1850.

I well remember the protracted conference that took place between you and Sir Henry on that occasion. He had, some days before, desired you to accept the declaration which is published on page 118 of the pamphlet [3] containing the correspondence between Mr Buchanan and Lord Clarendon, (a copy of which was kindly forwarded to me in February last by Doctor Mackie of the Dept of State) but which I think you refused to accept, *as a state paper* though in fact it was received at the Department until you had prepared the counterdeclaration on the evening of the 4th of July previous to Sir Henry's visit. This counter-declaration as stated in the memorandum also published on page 118 of the same document was, to the best of my recollection given to Sir Henry on the evening of the exchange of ratifications. A long discussion ensued between you respecting the propriety of his making and your receiving another note from him in reply to your counterdeclaration; but I saw none and I knew of no other at that time. On the morning of the 5th I endorsed the memorandum above mentioned on the declaration submitted by Sir Henry. There was then no such paper as a rejoinder by him to your counter-declaration among the papers connected with the treaty; otherwise I am sure you never would have told me to endorse on Sir Henry's declaration the memorandum which was dictated by you and written by me on

[1] This day was a Friday; perhaps delivery by the next day would have to be deemed equally regular in point of time; a little leeway must be allowed to a diplomat who has been up all night.

[2] Commissioner of Brazilian claims under the convention of January 27, 1849, and the act of March 29, 1850 (see the notes to Document 134; also Moore, International Arbitrations, V, 4609).

[3] House Executive Document No. 1, 34th Congress, 1st session, serial 840.

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the morning of the 5th, immediately after Sir Henry's departure from your house and I hope, my dear Sir, you know me well enough to believe that I never would have consented to pen that memorandum, had any such paper to my knowledge been in existence. The words used in the memorandum are, "After signing my note last night I delivered it to Sir Henry and we *immediately proceeded without any further or other action*, to exchange the ratifications of said treaty". How could you possibly have made that statement, within a few minutes after he had delivered you a letter which proved that you did *not* immediately proceed without any further or other action to exchange? If you dictated that memorandum whilst you had such a letter from Sir Henry you deliberately put on record proof, which could not fail to convict you, at some future period, of deliberate falsehood; and I, who recorded the statement at your request, if I had possessed any knowledge of such a paper did an act, which was certain also in after time to convict me of a participation in the guilt. What motive could possibly have influenced us or either of us to have been so wicked or so unwise?

I confess I was not a little surprized when I saw in the British Blue Book such a paper purporting to have been addressed by Sir Henry to you in reply to your counter-declaration prior to the exchange of ratifications; and the more so since I have never seen such a paper in any document published by our Government on the Central American question or in any newspaper published in this country or in Great Britain. Whilst I was in the Department of State, I acted as your confidential clerk. I believe you withheld nothing from me but gave me your entire confidence respecting all matters of diplomacy. I was with you day and night whilst you were negotiating this Convention—sometimes from early breakfast till after midnight. You seemed certainly to unbosom to me every difficulty and every anxious thought concerning it in every stage of its negotiation; and I feel sure you would not intentionally have concealed from me any paper relating to it; and unless you had done so I must have seen this rejoinder to your counter-declaration had it then existed, for I had free access at all times, in your absence as well as in your presence to all your papers pertaining to state affairs. I am therefore right confident, that no such paper ever could have been received by you.

When Mr Everett communicated these papers to the Senate January 3, 1853 he communicated only the declaration and your counter-declaration See Senate's Ex. Doc. No. 12 32d Congress 2d Sessn [serial 660]. If the pretended letter of Sir Henry was then in the Department it would seem rather strange that the clerk who had charge of the correspondence with the British Legation should have overlooked it when complying with the Senate's resolution calling for these papers.

I ought perhaps further to observe that when I took the declaration and counterdeclaration from your residence to the Department of State on the morning of July 5th, the memorandum endorsed in my hand writing and signed by you contained some words which do not appear in the published copy. I think you will find on inspection of the original memorandum at the Department that immediately preceding the closing sentence these words occur viz: "The blank in the declaration was never filled up" or words substantially the same. By that expression was meant that the date of the declaration had not been inserted when it was received. That sentence has evidently been omitted since the declaration was delivered by me in the Department. Why it has been so omitted I am at a loss to conjecture. But it would seem that since its delivery a date has been inserted in the declaration of Sir Henry and that a different date from the true one, which should have been the 4th day of July 1850.[1]

It is always difficult, you know, to prove a negative, but in this case the importance of the subject demands a rigid scrutiny as to the time when the declaration of Sir Henry was received at the Department. The British declaration, as signed by Sir Henry, is not inserted in the British Blue Book, though the form or draft of it is there. In your counter-declaration you say that "a copy of it is *hereto* subjoined" and we accordingly find it subjoined to your letter of the 4th of July. The words as set forth in the Blue Book on page 63 are "a

[1] As to the "blank" and the date of the declaration, see above under the heading "The Exchange of Ratifications".

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copy of which is *here*WITH subjoined"; but the copy does not therein appear. "*Here*WITH" might have been consistent with the suppression of the copy but "*here*TO" could not.[1]

I find, by referring to your speeches on this subject, in January 1854 and on the 17th & 19th of March 1856 a period anterior to the arrival of the Blue Book in this country, that in speaking of these declarations you always say that the exchange of ratifications took place immediately after your counter-declaration of the 4th July 1850. This was manifestly the impression fixed upon your mind whenever you expressed yourself about it after the exchange took place and it is remarkable that Mr Johnson, in his letter of Decr 30, 1853 appended to the Senate's Ex. Doc. No 13, 33d Congress 1st Session [serial 694] uses these words showing distinctly his impression to have been the same as your own. Rather it is not a mere impression for he states it as a positive fact, that "when Sir Henry consented to receive your counter-declaration of the 4th of July, you then consented to exchange upon that counter-declaration". Mr Johnson I am sure must have been familiar with the fact, as he himself states that he assisted you in drafting your counter-declaration after you had determined to break off the negotiation, as I know you at one time did after Sir Henry's insisting upon making the declaration.

But, my dear Sir, will you not permit me to suggest that no matter what may have been the purpose of those who have inserted this pretended letter of Sir Henry among the papers in the State Department if it should turn out to be found there, after I had, by your direction filed the genuine papers there, your counter-declaration still completely annuls the effect and defeats the intention of those who have interpolated this document among the records pertaining to this negotiation. In your counter-declaration, you not only say what the dependencies of Belize are, but you expressly state that the treaty "does include all the Central American States with their just limits and proper dependencies" and you go still further and inform Sir Henry that "no alteration could be made in the convention without referring the same to the Senate" by any declaration which he had made or could make. However important, therefore, it may be to detect fraud, yet so far as regards the treaty, it remains intact and must be construed by its own provisions and not by any declaration of the negotiators.

I hope, my dear Sir, you will not deem me obtrusive, if I have gone beyond a mere response to your request and given you some of my views in reference to the construction of the treaty as well as my recollections respecting the events connected with the exchange of ratifications

The major item of evidence in the case against the Bulwer note is a writing in the form of an unfinished draft letter of Clayton to Secretary of State Marcy, which is among the Clayton Papers (11 Clayton Papers, 2199–200, and 7 *ibid.*, 1417); that paper is of six note pages; it is somewhat scored and interlined, particularly on the penultimate page; the hand is Clayton's; while very clearly dated May 21, 1856, the actual date was perhaps earlier; Clayton speaks of having written to Fisher, "now engaged" in Delaware; but Fisher, in his letter (*supra*) of the same date, wrote of having seen Clayton the evening before at Washington. The text of the paper of Clayton follows:

[1] This trivial and wholly immaterial variance appears to have been merely a slip in the printing of Blue Book, 1856; the copy of the Clayton note of July 4, 1850, enclosed with Bulwer's despatch of July 8, reads "hereto" and does not have with it the text of the declaration; the draft declaration printed at p. 60 of the Blue Book lacks the signature but is otherwise the same as the declaration when delivered, with the date blank except for the year. In 1936 exhaustive search was made by the Foreign Office, at the request of the Department of State, for the original of the note of Clayton of July 4, 1850, with the "subjoined" copy of the declaration dated June 29, 1850; but the papers were not found (despatches from London, Nos. 2096 and 2228, of April 3 and May 29, 1936, and enclosures; D.S., file 026 Treaties/1952 and 2075).

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WASHINGTON—*May 21. 1856.*

Hon: WILLIAM L. MARCY
Secretary of State.

I have been looking over part of the British "Blue Book" containing the correspondence laid before Parliament, recently, in relation to the Central American Question. The Book having been received in this country within a few days only, I have not been able to peruse one half of it. But my attention has been arrested by a document published on the sixty fourth page purporting to be a letter addressed to me by Sir Henry L. Bulwer dated "July 4. 1850."

I deem it my duty to inform you without delay that no such letter was ever received by me from him. It purports to be a reply to my counterdeclaration or letter to him of the same date. I do not stop to consider whether it could be of any effect to change the spirit or meaning of my reply to him of that date. But I assert with perfect confidence that from my own knowledge no such letter was ever received by me from him. I know that he was distinctly informed when the ratifications of the treaty of the 19th of April 1850 were exchanged, that he could not be permitted to reply to my counterdeclaration, and that I would not exchange if he attempted it.

It is not possible that I can be deceived or mistaken on this subject. The memory of the facts is as fresh in my mind as it was on the morning of the 5th of July immediately after the exchange, when fortunately I made a written memorandum to accompany the declaration of the British Plenipotentiary & my reply to that declaration. That memorandum states that "After signing my note of last night" (being the counterdeclaration) "I delivered it to Sir Henry, and we *immediately* proceeded, *without any further or other action*, to exchange the ratifications of the treaty. The consent of the Senate was not required, and the treaty *was ratified as it* was made" Signed "John M. Clayton".

I have italicized the words which show that it was impossible Sir Henry could have put me in the receipt of any letter after mine to him & before the exchange took place. And I never can forget my fixed & unalterable purpose at that time to exchange on no letter he could write in reply to mine of the 4 July to him.

The exchange of the ratifications occupied us on the day (4th July 1850) and nearly all night after it. It took place in fact about the break of day of the 5th of July. Our difficulty arose in the adjustment of my counterdeclaration in reply to his declaration. We disputed about its phraseology. It is well known to others that when informed that the British declaration was to be made before the exchange I refused to exchange at all until he agreed to receive my reply which effectually obviated the objections otherwise insuperable which were entertained on the part of our Government. Of this the public has been long ago fully apprised by the letter of the Hon Reverdy Johnson attorney General of the United States at the time of the exchange, which letter is filed and published among the documents of the Senate [cited and quoted in part above].

The only person present during the exchange was the Librarian of the State Department now the attorney General of the State of Delaware, George P. Fisher Esquire—the same gentleman who was appointed by the President & Senate Commissioner to settle & adjust the claims on Brazil. Mr Fisher is a man of high standing and unquestioned character morality & honour. He was present during the whole interview with Sir Henry when the exchange took place and received the treaty and all the correspondence at the time & filed it by my orders in the State Department. He cannot fail to recollect a fact so important as that no such letter as Sir Henry's of the 4 July was received by me before the exchange. I have written to him at New Castle where he is now engaged in the public prosecutions to give you the information on this subject which I know he must be possessed of.

It will be observed that Sir Henry's declaration is for some reason unknown to me omitted in the Blue book. A copy of the draft of a declaration appears on the 60th page. It is well known that I refused to accept this declaration without replying to it and I could not have permitted him to reaffirm it again as is substantially done by his alleged letter of 4 July 1850.

On the 3d of January 1853, the whole of this correspondence [was] transmitted to the Senate, by Mr Everett in reply to a resolution of the Senate. He sent the correspondence *of which at that period it thus appears this letter was not a part.*

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No such letter was then on the files If it had been it must have been sent to the Senate.[1] Afterwards by some means unknown to me or to the clerk who has had charge of these papers this letter was placed among the papers & now I hear is to be found on file.

The report of Mr Everett containing the declarations on both sides with my memorandum endorsed on the declaration of the British Minister in the hand writing of Mr Fisher & signed by me was published in January 1853—has been published again & again in the public papers of this country as well as in Great Britain—has been often commented upon by myself & other members of the Senate & by Lord Clarendon & Mr Buchanan without any the slightest reference to or seeming knowledge of this letter. I have no doubt it has been fraudulently filed in the Department of State since the correspondence was sent to the Senate. In some comments of mine in the Senate it clearly appears that I always believed my own memorandum correct made at the time which substantially denies the existence of such a letter appears by the following extracts from speeches made by me in the Senate.

Various statements in the foregoing paper, assuming their accuracy, are irrelevant to the issue here; that Bulwer was informed at the time of the exchange "that he could not be permitted to reply to my counterdeclaration, and that I would not exchange if he attempted it", admits discussion of the subject and does not exclude a "reply" of an hour or day later than the exchange; the "memory of the facts" which was "as fresh in my mind as it was on the morning of the 5th of July immediately after the exchange" is limited to that same time; and so is the "fixed & unalterable purpose at that time to exchange on [2] no letter he could write in reply to mine". The theory, of which Clayton had "no doubt", that the Bulwer note was "fraudulently filed in the Department of State" later than January 3, 1853, is wholly untenable; that theory would mean that a conspiracy continued until January 1853, although the mission of Bulwer terminated in the summer of 1851; and that theory is disproved by the record in the Department of State which is discussed below.

But Clayton says twice, positively and directly, that "no such letter [as the Bulwer replying note] was ever received by me from him"; this assertion is worthy of serious attention.

It is possible that Clayton's memory was at fault, notwithstanding his belief that some of the facts were "fresh" in his mind; he was writing nearly six years after the event; he was in poor health; the malady from which he suffered resulted in his death within six months (November 9, 1856). Moreover, the "ever" of Clayton ends with July 22, 1850, the last day of his service as Secretary of State; the inclusive period from July 5 to July 22 of that year is one of fifteen secular days; they were strenuous; President Taylor became ill during the night of the exchange, July 4–5, died in the evening of July 9, and was buried on July 13; Clayton was stricken with grief; he was retiring from an office in which he had felt like a "man under a mountain"; and he was even then in declining health (see American Secretaries of State and Their Diplomacy, VI, 71–72); he wrote to Bulwer on July 17 that he had "been very sick since the death of the President

[1] This conclusion is quite erroneous.

[2] Meaning by "on" that he would not exchange if Bulwer delivered any reply at or prior to the exchange.

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which overwhelmed me with sorrow" (9 Clayton Papers, 1768). Evidently Clayton thought that the vital thing was to accept no replying note "on" the exchange; one received thereafter may have seemed of lesser importance and, in later years, have been forgotten.

Proof of faulty memory at the time is on the face of the paper; as first written, before the scorings and interlineations, the antepenultimate paragraph of the draft (following the word "page") reads thus:

> This [the draft declaration in Blue Book, 1856, 60] it appears was intended by Lord Palmerston to have been signed by both the negotiators. It is well known that I refused to sign it, and that Sir Henry then resorted to the expedient of a declaration signed by him alone—which was to be & was fully replied to by me before an exchange could take place.

Nothing could be more mistaken than this; Palmerston's instructions of June 8, 1850 (Blue Book, 1856, 59) were precise; he specifically directed a unilateral declaration; the form prescribed by him excluded signature other than by Bulwer; that form was exactly followed in the declaration delivered on June 29, 1850; Clayton could not have been asked to sign and so could not have refused; and what is said to be "well known" did not take place. The record as to this is conclusive, even without giving weight to Bulwer's remarks in the ninth and tenth paragraphs of his despatch of August 6, 1850 (*supra*); see also the letter of Reverdy Johnson of December 30, 1853 (quoted in part above).

It is to be borne in mind, too, that Clayton had been under distressful pressure; in a letter of resignation dated June 18, 1850 (9 Clayton Papers, 1735–36), he wrote that since he took office he had had "not a single day, scarcely a single hour", for his private affairs, and that he had kept up the business of the Department "only by the devotion of all my time, denying to myself any period for amusement or recreation and endeavoring to perform the duties of a clerk as well as a Secretary of State"; and for his successor he hoped that there might be procured "clerical assistance sufficient to enable him to discharge his duties without making himself a slave".

Furthermore, the substantial point intended to be made in a replying note must have been disclosed to Clayton during the argument of the night of July 4–5 and was, indeed, obvious without such disclosure. The British declaration excepted from the treaty British Honduras and "its Dependencies"; Clayton's answer, British Honduras and "the small islands in the neighborhood of that settlement, which may be known [1] as its dependencies"; the former phrase might be argued to include some or all of the Bay Islands, while the latter excluded them or, at the very least, might be deemed to exclude them; so in the replying note of Bulwer were the words "whatever are the Dependencies" (see Bulwer's comments on the wording in Edinburgh Review, CIV, 289–90).

[1] Perhaps these words, as first put forward by Clayton, were "are known"; two drafts of his note in 9 Clayton Papers, 1747–51½, so read; those two papers are very similar and, in general, very like the definitive note; the second of them is of the fairer form; both are signed by Clayton.

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That two of the Bay Islands, Roatan and Bonacca (Roatán and Guanaja) were claimed to be British possessions and to be ruled from Belize, Clayton had been informed by a note of Bulwer of the previous April 15 (withdrawn at Clayton's request; quoted below); he had written to Bulwer regarding these two islands on April 24 (also quoted below); and that the British claim of sovereignty might be based on a ground other than that of the islands being "dependencies" of British Honduras was admittedly known before the treaty; Clayton said in the Senate on January 16, 1854 (Congressional Globe, XXIII, appendix, 97):

> We knew that the British Government had, before that time [the negotiation of 1850], laid claim to Roatan, an island on the Atlantic side of the States of Honduras and Guatemala; but whether that island was or was not a part of the British West Indies, or a dependency of a Central American State, was a question about which we might have differed, and in relation to which this Government determined to leave the question of right to be decided hereafter.

So in any case, according to that statement, the "question of right" was understood to be open and to be not foreclosed by the treaty text, regardless of the declaration, the answer thereto, or the reply; and Clayton also argued in 1854 that Great Britain held the Bay Islands as a colony, if at all; that a colony or a place where Great Britain exercised dominion "cannot become the dependency of . . . the settlement of a nation holding as a mere settler [i.e., of British Honduras]. It is an absurdity on its face; and if Great Britain should set up such a pretension, it would only disgrace the lawyer in Doctor's Commons who should advise it or attempt to sustain it" (*ibid.*, 90, January 12, 1854).

Apart from any question of memory or inconsistency, there are circumstances which bear heavily against the Clayton paper of May 21, 1856. That draft communication was addressed to Secretary of State Marcy by one of his predecessors in that office; it charged fraudulent filing in the Department of State; it is inconceivable that such a letter would not have been answered, if delivered; but there is no answer in the Clayton Papers in the Library of Congress, which are mostly letters received; and no such letter from Clayton and no reference to one is to be found in the Marcy Papers in the Library of Congress or in the archives of the Department of State. Clayton was in Washington; the records of the Department of State were available; the clerk who had charge of the writings of 1850 was still in the service; one can reasonably suppose that the letter drafted was never delivered because found to be unsupported.

For this last supposition there is another solid basis in the subsequent silence of Clayton on the matter. On the June 19 following the date of the paper addressed to Marcy, Clayton spoke in the Senate; he discussed the declaration of June 29, 1850, his answering note of July 4, and the exchange of ratifications; the 1856 Blue Book had previously been referred to by Clayton in the same forum (Congressional Globe, XXV, pt. 2, 1205, May 14, 1856), when he had denied the truth of a statement therein; he was arguing against the interpretation of the treaty which had been put forward by the

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British Government, which had been disputed generally in the Senate, and which was highly unpopular; the setting was perfect for a denunciation of the replying note of Bulwer, which had first come to light in that Blue Book; but Clayton said not a word about it (*ibid.*, 1419–20). One can fairly infer from that silence that inquiry at the Department of State had disclosed a record there (discussed below) which Clayton could not impeach; it is significant that Fisher had written to Clayton in his letter of May 21 that "the importance of the subject demands a rigid scrutiny as to the time when the declaration [note] of Sir Henry was received at the Department".

Some other points made against the Bulwer note are to be mentioned:

1. Clayton and Fisher both remark that the Bulwer note was not among the papers communicated to the Senate on January 4, 1853, when the declaration, the answer of Clayton thereto, and his memorandum thereon were first made known (Senate Executive Document No. 12, 32d Congress, 2d session, serial 660); from this it is argued that the Bulwer note was not then in the files of the Department of State; this of course is a *non sequitur*. When Clayton, for example, wrote his report of July 18, 1850, for transmission to Congress with a large collection of papers, he withheld from communication the three writings mentioned (see House Document No. 75). The papers printed in the Senate document last cited were copied from D.S., 7 Notes to the British Legation, 251–54, in the order in which they there appear, which is not chronological (note of Clayton, declaration, memorandum), and with the text of the memorandum as there incompletely copied and not as it was signed; either the originals of two of those texts (one paper, the declaration and the memorandum written thereon), which were certainly available, were not then noticed or else it was decided not to use them; assuming for the moment that the Bulwer note was then in the files of the Department, it would naturally have been with other incoming communications from the British Legation, which included the original declaration with the original memorandum thereon (whether these incoming papers were then bound in D.S., 27 Notes from the British Legation or not); it being certain that one of the incoming papers was then either not seen or was seen and not used, one may infer that the same course (whichever it was) was followed with another; and it is also quite possible that a decision to make a partial communication was deliberately reached. At the time, Edward Everett was Secretary of State (November 6, 1852–March 3, 1853), following the death of Webster (October 24, 1852) and the brief *ad interim* tenure of Charles M. Conrad, Secretary of War; the internal administration of the Department of State had been going badly,[1] partly because of the long illness of Webster; Fillmore had written of this (Millard Fillmore Papers, I, 352), and Buchanan wrote of it later (Moore, Works of James Buchanan, IX, 18).

Whatever the reason for the form and extent of the papers communicated in January 1853 may be, it is questionless that the Bulwer

[1] As anyone who now works with the papers of that period can see.

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note of July 4, 1850, was in the Department files long prior thereto; the record of the Department of State (hereafter considered) is convincing on this point; and there is nothing to the contrary.

2. In Blue Book, 1856, 63–64, is printed the despatch of Bulwer of July 8, 1850, enclosing "the correspondence which passed between Mr. Clayton and me, after delivering the declaration"; the two notes of Clayton and Bulwer there follow as enclosures to the despatch; the Foreign Office memoranda of Palmerston and Henry U. Addington with that despatch (F.O. 5:513, No. 126) mention the former note but not the latter; this is curious, as Ward remarks (*op. cit.*, 313), but it is not significant, for there can be no doubt that Bulwer did send copies of both notes with his despatch No. 126, of July 8; the despatch itself is endorsed to the effect that it was received on July 22, that it had three enclosures, and that enclosure 3, which was the certificate of the exchange of ratifications, was kept with the original treaty; enclosures 1 and 2, which are respectively the notes of Clayton and of Bulwer, are each endorsed as having been in despatch No. 126; those two enclosures are written in the same hand, which is that of the body of the despatch; the wording of the despatch appears to refer to the note of Bulwer; one note alone would hardly be called "correspondence"; and Bulwer discussed both notes in his despatch of August 6, 1850 (F.O. 5:514, No. 157; quoted above).

3. It was said by Clayton that, after the publication of 1853, the declaration, the Clayton note of July 4, 1850, and the Clayton memorandum of the next day had been often commented on in the Senate "& by Lord Clarendon & M[r] Buchanan" (in the discussions at London of 1854–56) without "the slightest reference to or seeming knowledge of" the Bulwer replying note; this fact is put forward to support the supposition that the last-named paper had been "fraudulently filed in the Department of State since" the publication of 1853 (writing of May 21, 1856, quoted above). But this reasoning assumes that members of the Senate in 1853–56 would have had knowledge of uncommunicated papers in the files of the Department of State; of course they did not; none of them (except Clayton himself and Edward Everett [1]) knew of *any* of the papers here discussed prior to the communication of January 4, 1853; and supposing that Buchanan had learned of the Bulwer note before he went on his mission to England in August 1853 (although there is nothing to show that he did), it was no part of *his* argument. In respect of Clarendon, the reasoning of Clayton is even more obscure; Clarendon's knowledge of the Bulwer note was not derived from the files at Washington; its text had been in the Foreign Office since 1850; it was the British Government that made the note public in 1856; Clarendon could have quoted it earlier if he had wished to do so.

The nonuse by Clarendon of the Bulwer note of July 4, 1850, in the discussions at London in 1854–56 has a very simple explanation; that note (assuming its due delivery and acceptance) was unimportant; it did not help the British case in respect of Belize or even in respect of the Bay Islands. To read the two notes of Clayton and

[1] Senator from Massachusetts from March 4, 1853, to June 1, 1854.

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Bulwer as one would read common-law pleadings and to seek, after a refined and subtle comparison of wording, to spell out therefrom an unwilling and unforeseen admission on the part of the Government of the United States, would have been a feeble diplomatic course; it is not surprising that responsible officials of the British Government did not follow it, despite the views of writers then and since (see Edinburgh Review, CIV, 289–90; Quarterly Review, XCIX, 258; Bigelow, *op. cit.*, 117–24). Apart from variant constructions of the treaty text, the fundamental necessary to support the British claim of 1852 to the Bay Islands was the existence of British sovereignty there on April 19, 1850; the case for such sovereignty was a rather thin one and was not to be helped by words from Bulwer's note; no more would the contrary argument on the facts have been hindered by any such words (see the statement of Lord Clarendon of May 2, 1854, in Blue Book, 1856, 273–75, and the remarks of Buchanan of July 22, 1854, in *ibid.*, 280–81; also in Manning, *op. cit.*, VII, 547–50, 560–63).

Indeed, Lord Aberdeen, Prime Minister at the time, is reported by Buchanan to have said in a conversation of December 28, 1854, that "he thought it would be difficult for them to maintain that the Bay Islands were dependencies of Belise. He rather believed that the Islands referred to in their Treaties with Spain were certain small Islands in the immediate vicinity of that settlement & did not extend to so large an Island as Ruatan & one at such a distance" (D.S., 66 Despatches, Great Britain, No. 54, December 30, 1854; Manning, *op. cit.*, VII, 594–97).

Marcy appears not to have considered the claim to the Bay Islands as one to be decided on the wording of papers written in 1850; writing on June 12, 1854, to Buchanan, he mentioned "the notes which passed between the negotiators of the treaty at the time of exchanging ratifications" as one reason for not insisting upon the application of the stipulations of the treaty to Belize (within the limits of 1786); and he added this regarding Belize and the Bay Islands, treating the latter question, it seems, as one to be discussed on "facts" (D.S., 16 Instructions, Great Britain, 295–300, June 12, 1854; see Manning, *op. cit.*, VII, 105–7):

> An attempt on the part of Great Britain to extend Balize so as to include any part of Central America will be repudiating an express stipulation of the Treaty of the 19th of April 1850.
>
> I cannot believe that the British Government intends to hold the position that the Bay of Islands is an appendage to Balize. Should this be so, and she pertinaciously maintains it—there will be very little hope left for the success of your negotiation in regard to Central America. You have command of facts enough to drive her from this position unless there is a determination to hold it against the clearest evidence and the strongest arguments.

4. It is pointed out that the Bulwer note of July 4, 1850, has no date of receipt written on its face and that this is not in accord with the practice at the time in the Department of State; but this instance is only one of frequent exceptions to the then current practice. Moreover, if there had been a fraudulent later filing, one might well expect

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that the filer would have carefully penned on the note an early date of receipt, so as to buttress his fraud.

Reference has already been made to some of the evidence in support of the regularity of the Bulwer note. Bulwer sent a copy of it in due course to his own Government (July 8, 1850); he could not have known that its text would not be published at London with the treaty, and he may even have thought that it probably would be; he wrote to London in detail about the correspondence on August 6; certainly he expected that papers would be laid before Parliament, for he referred to the subject in an unnumbered despatch to Palmerston of June 17, 1850 (F.O. 5 : 513); in the enclosure to his note to Webster of August 17, 1850 (printed in part above), Bulwer wrote both of Clayton's answer to the declaration and of his own reply and suggested that the declaration be sent to the Senate; if this suggestion had been followed, the correspondence would naturally have gone with the declaration and been printed therewith; one can hardly venture to think that in July and August 1850 Bulwer would have contemplated publication if there had been anything irregular in the delivery of his note.

The circumstance that in the opening phrase of the Bulwer note some words are obviously written over erasures indicates that there was haste in its preparation and that its delivery was made a matter of urgency; otherwise a fair draft would have been written for signature; for a diplomatic note to show erasures is quite unusual. All this is more consistent with delivery on July 5, 1850, than with a later delivery.

There is, moreover, in the matter of the Bulwer note, one other very important and relevant piece of evidence to be mentioned.

The volume of the Department of State archives which is backed "Vol. 59/Index/to/Correspondence/with/British Legation./Department/of State" was originally a book of blank pages; thereon were listed, with a brief summary of subject or contents, communications from and communications to the British Legation, the former on the left pages, the latter on the right. Each two opposite pages were similarly numbered with a pen, the total number of such double pages being 231. The size of the book is approximately 8¼ by 11 by 1½ inches, and the earliest entry is of January 16, 1828. The binding is of full buckram, brown in color, with three labels of black leather bearing the binder's title pasted over the buckram, on the back; the stitching through the signatures shows that the book was rebound at some date later than the last entry in it, which is of August 7, 1860; and the figures "44114" written in pencil in the upper right corner of the third ruled page have been identified as a "jacket number" of the Government Printing Office, proving that the rebinding was done in 1923. The penwritten page numbers, however, in different hands, with differing pen points, and in varying shades of ink, show that the writing of the folios was in general approximately contemporaneous with the entries on the respective pages (cf., for example, folios 37, 87, and 88); the folios are in regular sequence; and it is thus evident that the pages remain throughout in their primary order and arrangement.

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On page 95 left of that book, six papers are listed; the first is the declaration of June 29, 1850; the second is the Bulwer note of July 4; the third and fourth are two notes of July 5 (each of which is marked as received on July 10); and these are followed by a note of July 6 and a note of July 11. On page 95 right are listed seven notes to Bulwer, one of June 24, two of June 28, then the Clayton note of July 4, followed by a circular note of July 10 and two notes of July 16.

The private note of Bulwer of August 17, 1850 (cited and quoted in part above), is entered in regular order on page 97 left, following an entry for August 16 and preceding one for August 17. The handwriting of this period is generally, and on pages 95 to 97 exclusively, that of Alexander H. Derrick.[1]

The summary of the Bulwer note of July 4, 1850, which is entered on page 95 left, is precisely the same as the endorsement written on the original of that note in D.S., 27 Notes from the British Legation; and that endorsement is also in the hand of Derrick. The last entry on page 94 left is of June 27; the last entry on page 94 right is of June 18. While there are some entries in the book obviously made after the event (in red ink or on an interleaf, for example, of papers overlooked), there are none on the pages here considered, where the entries are all fair and running.

It is almost inconceivable that such a record as that of this book was not made currently from day to day as the papers came in and went out; and the entries in the book are very strong, well nigh conclusive, evidence that the Bulwer note of July 4, 1850, was delivered at the Department of State on or about July 5, 1850. It is not a physical possibility that the entry of that note could have been inserted after subsequent entries had been made. To suppose a late date for the delivery of the Bulwer note of July 4 is to suppose a postponement until that later date (whatever it might have been) of all intervening entries during the period up to that time.[2]

The great weight of the evidence favors the conclusion that Bulwer's note of July 4, 1850, was regularly delivered at the Department of State; the very probable date of delivery is July 5, 1850. The question whether Clayton did or did not at that time know of the note is open. One possibility is that the receiving clerk, knowing that the exchange had taken place during the night of the previous holiday and outside the Department, supposed that the note was one of the papers which the Secretary of State had then seen, thought that to call it specially to Clayton's attention was unnecessary, and so filed it as a matter of course; but this, while consistent with all that is now available, is no more than conjecture.

[1] Not to be confused with William S. Derrick, then Chief Clerk of the Department of State. Alexander H. Derrick was in the service from 1836 until March 1864, seemingly continuously. Probably the two were kinsmen; both were from Pennsylvania.

[2] This fact makes impossible the theory of Clayton of a fraudulent filing in the archives after January 4, 1853, for that would mean that all the entries of the record book from pages 95 to 119 were postponed until the fraud was complete.

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EVENTS AND POLICIES DURING THE POLK ADMINISTRATION

Events which in 1850 were recent had greatly increased the importance to the United States of means of communication between the Atlantic and Pacific Oceans. The Oregon Treaty of June 15, 1846 (Document 122), had fixed the limits of the United States on the northwest coast at the Strait of Juan de Fuca; by the Treaty of Guadalupe Hidalgo of February 2, 1848 (Document 129), the boundary with Mexico began on the Pacific south of San Diego; both in the Oregon country and in California, American settlement was rapidly increasing; discovery of gold in the latter region had brought such an influx of population that the State of California was soon to become one of the Union (see the act of September 9, 1850; 9 Statutes at Large, 452–53); and the construction of the Panama Railroad was about to be commenced (May 1850). That road and any other mode of transit across the Isthmus of Panama were within the guaranties of Article 35 of the treaty with New Granada of December 12, 1846 (Document 125).

In his message of February 10, 1847, submitting that treaty of 1846 with New Granada to the Senate, President Polk had said that it could not be doubted and that by the Government of New Granada it was confidently expected "that similar guaranties will be given to that Republic by Great Britain and France" (Richardson, IV, 512–13); and the views of his immediate predecessor were expressly approved[1] by President Taylor in his message of April 22, 1850, submitting the Clayton-Bulwer Treaty to the Senate (quoted above), as they had been, in more general terms, in his annual message of December 4, 1849 (*ibid.*, V, 15–16).

Topographical knowledge of possible interoceanic canal routes was at the time quite limited; the Nicaragua route, with its Atlantic terminus at San Juan del Norte (Greytown) at the mouth of the northern channel of the San Juan River delta, was, however, generally supposed to be the most practicable one; this was the view of the Government of the United States. Uncertainty as to the exact course of the Nicaragua route made uncertainty as to the countries of Central America through which the canal might run; Secretary of State Clayton thought, for example, that it might "terminate in the Pacific, at Realejo,[2] within the confines of Nicaragua, or at the Gulf of Fonseca, within those of Honduras" (D.S., 16 Instructions, Great Britain, 79–83, December 29, 1849; printed in Manning, *op. cit.*, VII, 56–58). There were various frontiers of the Central American Republics *inter se* which were not delimited; in particular, the boundary between Costa Rica and Nicaragua was in dispute for its entire length from the Atlantic to the Pacific; that controversy continued until the treaty between those two states which was signed at San José April 15, 1858 (translation in British and Foreign State Papers, XLVIII, 1049–52), the validity whereof, subsequently questioned,

[1] But Buchanan thought that there was an essential difference in principle between the policies of the two administrations (see his letters of April 2 and May 30, 1850, in American Historical Review, V, 99–102).

[2] Some six miles north of Corinto, now the chief Pacific port of Nicaragua.

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was upheld by the arbitral award of March 22, 1888 (see Moore, International Arbitrations, II, 1945–68, and V, 5074–79). In any canal agreement between the United States and Great Britain, it was essential to take account of such factors of uncertainty; but none of them was of a nature to block the road.

A major obstacle was the Mosquito question.[1] Great Britain claimed a protectorate over the "King" of the Indian tribes known as the Mosquitos and consequently over the extensive region [2] (the limits whereof were not fully defined) of which the Mosquito chief was alleged to be the sovereign; it was asserted by Viscount Palmerston in 1848 that "in point of fact, the territory of Mosquito has been acknowledged by Great Britain as an independent State for 225 years, and the King of that country has for upwards of 180 years been acknowledged as being under the protection of the British Crown" (British and Foreign State Papers, XXXVIII, 772). According to the Mosquito contention, as put forward in 1847 by the Government of Great Britain, within the protectorate was all the Caribbean coast of Central America from Cape Honduras to the southern channel (called the Colorado) of the San Juan River delta, thus including the port of San Juan del Norte (see *ibid.*, 642, 736); in terms of political geography of this day, the "State" of Mosquito had, according to that claim, sovereignty over the Caribbean littoral of Honduras from Cape Honduras to the Honduran-Nicaraguan frontier, over all the Caribbean coast pertaining to Nicaragua, and over the small stretch of Costa Rican seaboard at the San Juan River delta. Notice of the Mosquito pretensions having been given to the Governments of Honduras and Nicaragua (September 10, 1847), protests by them [3] were made in response (October 13 and 14, 1847; see *ibid.*, 698–99, 709–13).

Notice from the "Council of State" of Mosquito to the Nicaraguan Government to withdraw from the mouth of the San Juan River by January 1, 1848, was given on October 25, 1847 (*ibid.*, 701); on the day fixed, with the support of British naval forces, the flag of Nicaragua at San Juan del Norte was hauled down and a flag of "Mosquitia" was run up (*ibid.*, 736–38); the place was (later) renamed Grey Town (generally written Greytown). On January 10 Lieutenant Colonel Antonio Salas, of the Nicaraguan forces at Sarapiquí, some thirty miles up the San Juan River, rehoisted the Nicaraguan flag at San Juan del Norte and took prisoners two British subjects, acting officials

[1] For the history and background of the Mosquito question, see Williams, Anglo-American Isthmian Diplomacy, 1815–1915, 12–25, 39–45; events of 1847–49 are treated in *ibid.*, 47–52.

[2] See the "Map of the Mosquito Coast" in Parliamentary Papers, 1847–48, Commons, LXV, "Correspondence Respecting the Mosquito Territory", facing p. 36.

[3] There was also correspondence with the Government of New Granada; that Republic at the time made claim to the Mosquito coast as far north as Cape Gracias a Dios, based in part on the ordinance of the King of Spain of November 30, 1803 (see British and Foreign State Papers, XXXVIII, 770–72, and the pamphlet "The Coast of Mosquito and the Boundary Question between New Granada and Costa Rica", by Victoriano de Diego Paredes, a copy of which is in D.S., 2 Notes from the Colombian Legation).

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of the "branch of the Mosquito Government" there; one of these was George Hodgson, the senior member of the "Council of State of Mosquito". To obtain redress for "insults and outrages" and to recover the two prisoners, an expedition of 260 officers and men under the command of Captain Granville Gower Loch, of Her Britannic Majesty's ship *Alarm*, proceeded (February 8) up the San Juan River to Sarapiquí, "the nearest Nicaraguan settlement"; on February 12 the expedition neared the fort at Sarapiquí and was fired on; the post was then attacked, taken, and destroyed "after a sharp action" in which the British losses were two killed and thirteen wounded, with at least twenty killed and perhaps forty wounded of the Nicaraguans. The British command then advanced and occupied Fort San Carlos, at the entrance of Lake Nicaragua; a treaty of six articles was signed at the island of Cuba in Lake Nicaragua on March 7, 1848, by Captain Loch and three Commissioners of the Government of Nicaragua, whereby all British demands in respect of San Juan del Norte and otherwise were accepted; by the final article of that treaty the privilege of further negotiation at London for "a final arrangement to these affairs" was conceded (a translation of the treaty and of the Nicaraguan ratification thereof on March 8 is in *ibid.*, 765–67). Reports of these measures were received at the Foreign Office in London "with great satisfaction" (April 29, 1848); and instructions had previously (March 24) been sent "to inform the Government of Nicaragua, that a British ship of war will be directed to visit St. John's [San Juan del Norte] from time to time, and to expel from thence any troops or officers, civil or military, belonging to Nicaragua, who may be found at St. John's; and you will add, that if the Nicaraguan authorities persist in intruding themselves there, measures of an unfriendly character will be resorted to upon parts of their own coast, as Her Majesty's Government must support and maintain the right of the King of Mosquito to the port of St. John's" (*ibid.*, 746; the foregoing summary account is based on *ibid.*, 697–769, *passim;* for correspondence of this period and other relevant papers, see *ibid.*, 641–795).

Effective control and administration of Greytown thus became fixed and established in the hands of the British officials and British subjects who functioned in the name of the "King" of Mosquito. It appears that "the governing Council of the Mosquitos" was "entirely composed of Englishmen" and was thus "nominally Mosquito, actually English" (Blue Book, 1856, 41; for the form of proceedings of the "Council of State of Mosquito", see British and Foreign State Papers, XXXVIII, 714–17); and the "King" of the Mosquitos was, during his minority, under the tutelage of James Green, member of the Council of State in 1847 and later British consul at Greytown, Chairman of the City Council at that port, and agent for the "King" of Mosquito (*ibid.*, 767–68; Blue Book, 1856, 104, 130–31, 168–69).

The Government of the United States denied that the Mosquito tribes or their "King" had sovereignty over the Mosquito coast or any part of it and denied the existence of a Mosquito protectorate; the territorial rights of the Mosquito tribes, who amounted altogether, it was thought, to less than five thousand souls, were deemed to be

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merely possessory. The canal policy of the United States was, according to the statement of the presidential message of April 22, 1850 (quoted above), "to establish a commercial alliance with all great maritime states for the protection of a contemplated ship-canal through the territory of Nicaragua to connect the Atlantic and Pacific Oceans, and at the same time to insure the same protection to the contemplated railways or canals by the Tehuantepec and Panama routes, as well as to every other interoceanic communication which may be adopted to shorten the transit to or from our territories on the Pacific". The *de facto* situation at Greytown was plainly irreconcilable with that policy.

For some years prior to 1848, there was no diplomatic agent of the United States in Central America, although "most acceptable information" was from time to time (1842–48) received at the Department of State from Henry Savage,[1] who wrote from Guatemala (see D.S., 15 Instructions, American States, 62, June 3, 1848, and 1 Despatches, Guatemala, *passim;* also Manning, *op. cit.*, III, Document 746, and pt. 2, *passim*).

The diplomatic and other correspondence, from 1848 on, relevant to the Clayton-Bulwer Treaty, is extremely voluminous; for the period to 1860, a great number of items are cited, and many of them are summarized or quoted, in whole or in part, in Moore, Digest, III, 130–82; the volumes of Manning, Diplomatic Correspondence of the United States, Inter-American Affairs, 1831–1860, are a comprehen-

[1] The latest official mission was that of William S. Murphy, Special and Confidential Agent of the United States to Central America, in 1841–42 (see Wriston, Executive Agents in American Foreign Relations, 639–41, and Williams, *op. cit.*, 45, note 98). Savage was an American merchant at Guatemala who was placed "in charge of all matters concerning the Legation of the U States" by Murphy when the latter left Guatemala on March 30, 1842 (D.S., 1 Despatches, Guatemala, No. 1, June 18, 1842), and who continued to communicate with the Department of State from that time until the arrival of Elijah Hise as Chargé d'Affaires to Guatemala in November 1848 (*ibid.*, *passim*).

Savage went to Guatemala in 1825, where he was "attached to the Consulate", his uncle, Charles Savage, of Kentucky, having been appointed consul at that city April 19, 1824 (D.S., 1 Consular Despatches, Guatemala, October 18, 1837; Executive Journal, III, 370, 372). On February 6, 1830, Savage was appointed by his uncle, in consequence of the latter's illness, "to act as Consul"; at that time he "received an exequatur" from the Government of Guatemala (D.S., 1 Consular Despatches, Guatemala, No. 1, July 1, 1830); and thereafter until November 1835 he served "as Acting Consul, but really performing the duties of Chargé d'affaires *de facto*" (*ibid.*, October 18, 1837). Later despatches from Savage to the Department of State, from May 10, 1850, to January 31, 1865, are in D.S., 3 Despatches, Guatemala, and 2 Consular Despatches, Guatemala, *passim*.

On March 13, 1865, during a recess of the Senate, Savage was appointed consul at Guatemala, his only commission from the Government of the United States. His nomination was submitted to the Senate on the following December 19 but was rejected May 29, 1866 (Executive Journal, XIV, 309, 831, 836).

For his diplomatic and consular services from 1830 to February 13, 1854, the Court of Claims in 1865 rendered judgment in Savage's favor in the amount of $21,625, being $1,500 a year for fourteen years and five months (Savage *v.* United States, 1 Court of Claims Reports, 170–72; Savage, Executor, *v.* United States, 23 *ibid.*, 255–70; see D.S., Miscellaneous Letters, July 1866, pt. 1, letter of Lemuel Shaw dated July 5, 1866, and House Report No. 60, 43d Congress, 1st session, serial 1623).

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sive collection of the significant papers or portions of papers among the archives of the Department of State that are within the scope of the title of that work; particular citation therefrom is sometimes omitted in these editorial notes; so it is to be borne in mind not only that various writings here appearing are to be there found as well, but also that others which herein are merely cited or are printed only in part are to be found at length in those compilations by Dr. Manning.

Elijah Hise was appointed Chargé d'Affaires to the Republic of Guatemala on March 31, 1848, and on the following June 3 he was furnished with instructions by Secretary of State Buchanan (D.S., 15 Instructions, American States, 51–61; printed in part in the notes to Document 135), excerpts wherefrom follow; the inconclusive character of these instructions was required, Buchanan thought, by the "circumstances", one of these being the fact that the fate of the Treaty of Guadalupe Hidalgo (Document 129) was not then known at Washington (see his letter of December 3, 1849, in American Historical Review, V, 98–99); but no further instructions regarding his mission were sent to Hise at any time:

When the Federation of the Centre of America was formed, the government and people of the United States entertained the highest hopes and felt the warmest desire for its success and prosperity. Its government was that of a Federal Republic, composed of the five States of Guatemala, Honduras, Nicaragua, St Salvador and Costa Rica, and its constitution nearly resembled that of the United States. This constitution unfortunately endured but a brief period, and the different States of Central America are now politically independent of each other. The consequence is that each of them is so feeble as to invite aggressions from foreign powers. Whilst it is our intention to maintain our established policy of non-intervention in the concerns of foreign nations, you are instructed by your counsel and advice, should suitable occasions offer, to promote the reunion of the States which formed the Federation of Central America. In a federal union among themselves consists their strength. They will thus avoid domestic dissentions and render themselves respected by the world. These truths you can impress upon them by the most powerful arguments.

. . . . . .

I have no doubt that the dissolution of the confederacy of Central America has encouraged Great Britain in her encroachments upon the territories of Honduras, Nicaragua and Costa Rica, under the mask of protecting the so-called kingdom of the Mosquitos. We learn that under this pretext, she has now obtained possession of the harbor of San Juan de Nicaragua, probably the best harbor along the whole coast. . . . Under the assumed title of protector of the Kingdom of Mosquito, a miserable, degraded and insignificant tribe of Indians, she doubtless intends to acquire an absolute dominion over this vast extent of sea coast. With what little reason she advances this pretension, appears from the Convention [1] between Great Britain and Spain, signed at London on the 14th July, 1786.

. . . . . .

The Government of the United States has not yet determined what course it will pursue in regard to the encroachments of the British Government, as protector of the King and Kingdom of the Mosquitos, but you are instructed to obtain all the information within your power upon the nature and extent of these encroachments and communicate it with the least possible delay to this Department. We are, also, desirous to learn the number of the Mosquito tribe, the degree of civilization they have attained, and every thing else concerning them.

[1] French text and English translation in British and Foreign State Papers, I, pt. 1, 654–63.

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The independence as well as the interests of the nations on this continent require that they should maintain an American system of policy entirely distinct from that which prevails in Europe. To suffer any interference on the part of European Governments with the domestic concerns of the American Republics and to permit them to establish new colonies upon this continent, would be to jeopard their independence and to ruin their interests. These truths ought every where throughout this continent to be impressed on the public mind. But what can the United States do to resist such European interference whilst the Spanish American Republics continue to weaken themselves by division and civil war and deprive themselves of the ability of doing any thing for their own protection?

Hise did not arrive at his post until about November 17, 1848; only two despatches from him of a date subsequent to his arrival at Guatemala were received at the Department of State during the Polk administration (D.S., 1 Despatches, Guatemala, November 27 and December 5, 1848, unnumbered); and during that period no relevant instructions were sent to George Bancroft, Minister at London, except one which dealt with a report of a contemplated British protectorate over Costa Rica (D.S., 15 Instructions, Great Britain, 368–70, October 23, 1848); but with that instruction to Bancroft was transmitted (in part) the instruction of June 3, 1848, to Hise (see Bancroft to Buchanan, November 16, 1849, in American Historical Review, V, 97–98; also D.S., 59 Despatches, Great Britain, No. 112, January 12, 1849). Bancroft accordingly limited himself to communications with the Central American diplomatic agents at London (Francisco Castellón, Chargé d'Affaires of Nicaragua, who also represented the Government of Honduras; José de Marcoleta, Chargé d'Affaires of Nicaragua to Belgium and France; and Felipe Molina, Minister of Costa Rica), which he duly reported (*ibid.*, *passim*, to No. 127, March 31, 1849). The representations regarding the Mosquito coast made at London on behalf of Honduras and Nicaragua were wholly fruitless (*ibid.*, No. 135, May 30, 1849).

Policy of the Taylor Administration

Within a month after the incoming of the Taylor administration, Ephraim George Squier was appointed (April 2, 1849) Chargé d'Affaires to Guatemala, succeeding Elijah Hise in that capacity. Squier was furnished with letters of credence to the Ministers for Foreign Affairs of Guatemala, Costa Rica, El Salvador, Honduras, and Nicaragua, the first under date of April 25, 1849, and the others under date of May 1, 1849 (D.S., 3 Credences, 268–69). Squier also had full powers dated April 24, 1849, to treat with each of those five Governments concerning general commerce and claims; those powers were identic, *mutatis mutandis*, and were similar in form and content to that previously given to Hise for negotiating with Guatemala (*ibid.*, 267; see the notes to Document 135; it was not known at the time in Washington that that treaty with Guatemala had been signed by Hise on the previous March 3). To Squier were given lengthy instructions dated May 1, 1849 (D.S., 15 Instructions, American States, 64–94), relevant portions whereof follow (printed in full in Manning, *op. cit.*, III, 36–51):

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The controversy between the State of Nicaragua and Great Britain respecting the Mosquito coast and the Port of San Juan, has not yet been adjusted. That port seized by a British force without any previous notice or declaration of war in January 1848, it is understood still remains virtually in possession of Great Britain and there is cause to apprehend that she will not voluntarily relinquish it. Nicaragua has recently sent Mr Francisco Castellon as her Chargé d'Affaires to London, and Mr Marcoleta in the same capacity to Brussels.[1] Mr Bancroft our Minister at London however, expresses an opinion that their missions will be fruitless.

. . . . . .

It has been represented to this Department that certain citizens of the United States are desirous of entering into a contract with the Government of Nicaragua for the purpose of constructing a canal between the Atlantic and Pacific by the way of the River San Juan and lake Nicaragua terminating at Realego on the Pacific. They think that their object would be forwarded and facilitated if it were in some way to be countenanced by this Government. There is a strong disposition to bestow this countenance to any extent which may be compatible with prudence. Proceedings both of the Executive and of Congress for many years anterior to the present have evinced the interest with which this government has regarded the possibility of shortening the transit by sea between our territories on the Atlantic and those on the Pacific. For obvious reasons this interest has of late been materially increased, for a passage across the isthmus may be indispensable to maintain the relations between the United States and their new territories on the Pacific, and a Canal from Ocean to Ocean might and probably would empty the treasures of the Pacific into the lap of this country. If therefore by your personal good offices with the Government of Nicaragua you can aid in securing for the persons above referred to the contract for the construction of a canal you are at liberty to take that course.

A letter introducing you to the Minister for Foreign Affairs of that State is accordingly herewith delivered to you. It is to be distinctly understood, however, that this government is not in any way to be made a party to the transaction except in conformity to the instructions hereinafter given, and as it would not be expedient even to lend its countenance to an assignable contract, you will take care that no clause providing for an assignment is admitted into that which may be concluded with the government of Nicaragua. It is most desirable that the parties to the contract shall thus be deprived of the opportunity of making it a mere subject of speculation and thus retarding or preventing the completion of the canal. Accordingly as soon after your reception by the Government of Guatemala as in your judgment, your absence from the City will permit without injury to the other duties of your mission, or even before your reception if the state of affairs at Guatemala should warrant it, you may visit Leon for the object above referred to. You will also bear with you a letter from this department to the Minister for Foreign Affairs of Nicaragua, acknowledging the receipt of two communications from him to this Department upon the subject of the British encroachments on the Mosquito coast. You may assure him that we entertain the liveliest sympathy for his government and will employ any moral means in our power for the purpose of frustrating the apparent designs of Great Britain in countenancing the claims to sovereignty over the Mosquito coast, and the Port of San Juan asserted by her ally the alleged monarch of that region.

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If you should be of the opinion that the States of Nicaragua, Costa Rica, and Honduras are as capable of maintaining their independence and of discharging the duties of sovereignty as Guatemala and San Salvador, the Department is not aware of any good reason why treaties may not be concluded with them also. You will accordingly herewith receive full powers for that purpose. In negotiating these treaties, you will in general be governed by the instructions to your predecessor. It is desirable, however, that the Treaty with Nicaragua should contain an article similar to that in the late treaty between the United States and New Granada, securing to our citizens and their effects a free transit between the two oceans by the way of Nicaragua river and lakes Nicaragua or Leon and over

[1] To ask for the mediation of Belgium.

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any Canal or railroad which may hereafter be constructed along that route on the same terms enjoyed by the citizens of Nicaragua. In the present posture of the conflicting claims respecting the Mosquito shore and the port of San Juan, it is not deemed expedient to give as a compensation for the grant of the right of way any guaranty of the independence of the country through which the canal or railroad might pass. Such a guaranty is entirely inadmissible in the proposed treaty. I greatly mistake, however, the intentions of the people of this country if they would supinely allow any one of the three contemplated passages to the Pacific to be directly or indirectly either held or obstructed by any great maritime power. There can be as little doubt that they will deem the people of the Spanish American States the rightful inheritors of all territory within their respective limits to which Spain had a just title.

The British claim to the port of San Juan, and, in effect, to the whole Mosquito coast, is founded upon the assumption, that the savage Indians who inhabit that coast, who perhaps never amounted in numbers to ten thousand, and are now less than five thousand, including zamboes and Mulattoes, were never subdued by Spain, by Central America, or by Nicaragua; that in fact, they constitute a monarchy, entitled to the privileges, because capable of discharging the duties, of a sovereign State. The mere statement of such a pretension is sufficient to startle an impartial inquier. The importance of the subject, however, and the apparent earnestness of the British Government in regard to it, require an examination of the title to that Region, as thorough as the materials within reach of this Department will allow compatibly with the limits proper for this communication.

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Against the aggressions on her territory Nicaragua has firmly struggled and protested without ceasing and the feelings of her people may be judged from the impassioned language of the proclamation of her Supreme Director on the 12th November 1848. "The moment" says he "has arrived for losing a country with ignominy, or for sacrifising with honor the dearest treasures to preserve it. As regards myself, if the power which menaces sets aside justice, I am firmly resolved to be entombed in the remains of Nicaragua rather than survive its ruin." The eloquent appeal of the Minister of Nicaragua to this government is evidence not less striking and impressive of the disposition of an injured people to resist what they believe to be injustice and oppression. Will other nations interested in a free passage to and from the Pacific by the way of the river San Juan and Lake Nicaragua, tamely allow that interest to be thwarted by such pretensions?

As it regards the United States, this question may confidently be answered in the negative.

Having now sufficiently apprized you of the views of this Department in regard to the title to the Mosquito coast, I desire you distinctly to understand how important it is deemed by the President so to conduct all our negotiations on the subject of the Nicaragua passage as not to involve this country in any entangling alliance on the one hand or any unnecessary controversy on the other. We desire no monopoly of the right of way for our commerce and we cannot submit to it, if claimed for that of any other nation. If we held and enjoyed such a monopoly it would entail upon us more bloody and expensive wars than the struggle for Gibraltar has caused to England and Spain. The same calamities would infallibly be cast upon any other nation claiming to exclude the commerce of the rest of the world. We only ask an equal right of passage for all nations on the same terms, a passage unincumbered by oppressive exactions either from the local government within whose sovereign limits it may be effected, or from the proprietors of the canal when accomplished. For this end we are willing to enter into a treaty stipulation with the government of Nicaragua that both governments shall forever protect and defend the proprietors who may succeed in cutting the Canal and opening the water communication between the two oceans for our commerce. Without such protection it is not believed that this great enterprize would ever be successful. Nicaragua is a feeble state, and capitalists, proverbially a timid race, may apprehend from the rapacity of great maritime powers the obstruction and even the seizure of the canal. Similar apprehensions on their part from revolutions in the local government, from the oppression and exactions of temporary chieftains and from causes not necessary to be explained may operate to retard

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a work in regard to which it may be safely predicated that, when successfully accomplished, its benefits to mankind will transcend those of any other similar work known in the history of the world. All these apprehensions may and will be removed by the solemn pledge of protection given by the United States and especially when it is known that our object in giving it is not to acquire for ourselves any exclusive or partial advantage over other nations. Nicaragua will be at liberty to enter into the same treaty stipulations with any other nation that may claim to enjoy the same benefits and will agree to be bound by the same guarantee. In desiring that our own countrymen may obtain the charter or grant of the right to make the canal, we do not mean to be misunderstood. Our purpose in aiding American citizens to obtain the grant is to encourage them in a laudable effort, relying as their own government does more on their skill and enterprize than on that of others. If they themselves prefer to unite with their own the capital of foreigners who may desire to embark in the undertaking this government will not object to that. We should naturally be proud of such an achievement as an American work; but if European aid be necessary to accomplish it why should we repudiate it, seeing that our object is as honest as it is openly avowed, to claim no peculiar privilege, no exclusive right—no monopoly of commercial intercourse, but to see that the work is dedicated to the benefit of mankind to be used by all on the same terms with us and consecrated to the enjoyment and diffusion of the unnumbered and inestimable blessings which must flow from it to all the civilized world.

You will not want arguments to induce Nicaragua to enter into such a treaty with us. The canal will be productive of more benefit to her than any other country of the same limits. With the aid of the treaty it may—without such protection from some power equal to our own it cannot, be accomplished.

Let your negotiation with her be frank, open and unreserved as to all our purposes. The same reasons for our interference must be avowed to the capitalists who may enlist in the work. Before you treat for their protection look well to their contract with Nicaragua. See that it is not assignable to others, that no exclusive privileges are granted to any nation that will agree to the same treaty stipulations with Nicaragua, that the tolls to be demanded by the owners are not unreasonable or oppressive, that no power be reserved to the proprietors of the Canal or their successors to extort at any time hereafter, or unjustly to obstruct or embarrass the right of passage. This will require all your vigilance and skill. If they do not agree to grant us passage on reasonable and proper terms, refuse our protection and our countenance to procure the contract from Nicaragua. If a charter or grant of the right of way shall have been incautiously or inconsiderately made before your arrival in that country, seek to have it properly modified to answer the ends we have in view.

At the same time (May 3, 1849) various communications from Nicaragua were belatedly answered; one of these (December 15, 1847) was from the President and Supreme Director of Nicaragua (see House Document No. 75, pp. 79–80, 132); there were two notes from the Secretary of State for Foreign Relations of Nicaragua (*ibid.*, 11–14, 80–84, November 12, 1847, and March 17, 1848); and there was one from Castellón, written while en route to London, asking for answers to those two notes (*ibid.*, 91, November 5, 1848). Clayton wrote (*ibid.*, 132; D.S., 2 Communications to Foreign Sovereigns and States, 98) that the acknowledged communications (printed, with the answers thereto, in Manning, *op. cit.*, III, Documents 850, 851, 864, 872, 748, and 749)—

have been read with painful interest, and have led to a determination on the part of the President of the United States, to accede to the request of the Government of Nicaragua for the interposition of the good offices of this Government in a friendly manner and spirit towards both Great Britain and Nicaragua, for the purpose of adjusting the controversy with reference to the Mosquito Shore. Instructions have accordingly been transmitted to the Minister of the United

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States at London which it is hoped may be instrumental towards inducing the British Government to respect the just rights of Nicaragua and towards effecting a satisfactory accommodation of all the matters in dispute.

The instructions to Squier of May 1 were in large part communicated to George Bancroft, Minister at London, on May 2, 1849; in the instruction to Bancroft, with some discussion of sovereignty in Central America generally and over the Mosquito coast in particular, there were the following statement of the views of the President and directions (D.S., 15 Instructions, Great Britain, 386–90; printed in House Document No. 75, pp. 230–32; also in Manning, *op. cit.*, VII, 33–36; see the later comments of Bancroft on the directions in his letter to Buchanan of November 16, 1849, printed in American Historical Review, V, 97–98):

He [the President] is decided in the opinion that that part of the American continent having been discovered by Spain and occupied by her so far as she deemed compatible with her interests, of right belonged to her; that the alleged independence of the Mosquito Indians, though tolerated by Spain, did not extinguish her right of dominion over the region claimed in their behalf, any more than similar independence of other Indian tribes did or may now impair the sovereignty of other nations, including Great Britain herself, over many tracts of the same continent; that the rights of Spain to that region have been repeatedly acknowledged by Great Britain in solemn public treaties with that Power; that all those territorial rights in her former American possessions descended to the States which were formed out of those possessions, and must be regarded as still appertaining to them in every case where they may not have been voluntarily relinquished or cancelled by conquest followed by adverse possession.

Under these circumstances, therefore, after the most deliberate consideration of the subject, the President has decided to present the views of this Government in regard to it to the friendly consideration of the Government of Great Britain. In forming this determination, though influenced by a just sympathy for the injuries which that Republic would sustain if Great Britain should persist in claiming, directly or indirectly, dominion over the mosquito shore, he has not been unmindful of the past policy of this Government.

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It is deemed advisable that, before entering into a written correspondence upon the subject with the British Minister for Foreign Affairs, you should sound him in conversation as to the views and intentions of the British Government in regard to the Mosquito coast—whether it is intended by that Government to set aside a portion of the territory for its own uses—for any and what reason, and on what principle—whether that Government claims a right, as ally or protector of the Mosquito King, to control or obstruct the commerce of the river San Juan de Nicaragua, or *to keep forts or establishments of any kind on its banks*—what are to be the boundaries of the territory—and by whose authority have they been established. All this should be communicated verbally in conferences, with intimations of the inexpediency of any great commercial Power claiming to hold the river in case it should become a highway for the nations of the earth. Say in the most friendly manner that, while we should look upon the exclusive possession or command of such a river by ourselves as a great evil to us which would draw upon us the jealousy and ultimately the hostility of the rest of the commercial world, we ought not to consent to its obstruction by any other Power; and if you find that he is still unwilling to abandon the British and Mosquito claim, or to retire from the river and the command of its harbor, then impart to him orally the views of the President as conveyed in this despatch. You will be careful to assure him that, in questioning the title of the Mosquito King to the territory claimed for him, this Government is not actuated by ambitious motives, or by any feeling in the least unfriendly towards Great Britain. We are impelled solely by a proper vigilance for the interests committed to our charge, and by a due sympathy for those whose rights we believe to have been invaded.

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If the result of your interviews with that functionary should be an impression that his Government will not pause or recede in the steps which it seems to be taking in the quarter adverted to, you will then address to him, in the name of this Government, in firm yet respectful language, a formal written protest and remonstrance against them, and immediately communicate to this Department the result of all your official interposition and proceedings.

In order that you may possess full knowledge of the views of the President on this subject, you will herewith receive an extract of a copy of the secret instructions given to E. George Squier, our present Chargé d'Affaires to Guatemala, who, when you shall be in the receipt of this, will be on his way to Leon, to negotiate with the Government of Nicaragua.

It will be expedient to obtain an assurance from the Minister from Costa Rica, now in London, that he will not commit the rights of that State by any convention with Great Britain. A cession to Great Britain of any of her territory south of the river San Juan de Nicaragua might seriously embarrass us. No British forts or British possessions should exist on the right or left bank of the river. Warn the Minister of Costa Rica to make no common cause with Great Britain by the cession of any part of her territory or any rights over it. The safety of every American State, whether in North or South America will require of it to yield no further to foreign aggression.

The steps taken by Bancroft were reported by him under date of August[1] (D.S., 59 Despatches, Great Britain, No. 143; printed in House Document No. 75, 234–37); Clayton deemed that report inadequately informative. With Palmerston, Bancroft had one "very short" interview, on an unstated date, probably in July; and he did not complete the "protest" which he was directed to make. To the cited despatch of Bancroft there were seventeen enclosures (printed in *ibid.*, 237–309; No. 8 is now lacking from the archives volume); one of them, a note of Palmerston to Castellón of July 16, 1849, stating very flatly the British position regarding Mosquito, was received at Washington with some concern (*ibid.*, No. 16, pp. 304–9; the despatch and five of the enclosures thereto are printed in Manning, *op. cit.*, VII, 303–7, 298, and III, 492–97, 370–74).[2]

Abbott Lawrence, of Massachusetts, was appointed (August 30, 1849) as successor to Bancroft but was not to leave for his post until September 26. It was accordingly thought "imperative" that William C. Rives, who had been appointed Minister to France on July 20, should go to Paris by way of London and communicate further with Palmerston; Rives was to perform the duty previously enjoined upon Bancroft to the extent only of "conversing freely" with Palmerston (D.S., 15 Instructions, France, 91–92, August 16, 1849; Manning, *op. cit.*, VII, 38–39). The conversation had by Rives with Palmerston on September 24 is treated below.

In the course of the negotiations which led up to the Clayton-Bulwer Treaty, embarrassments arose from unauthorized acts of diplomatic agents in Central America. One of these was the signing by Elijah Hise at Guatemala, on June 21, 1849, of a treaty with Nicaragua. To Hise notice had been sent (May 2, 1849) of the appointment of his successor (D.S., 15 Instructions, American States, 64); but he left Guatemala for the United States before that word

[1] The day of the month is uncertain but can hardly have been earlier than August 26; Bancroft had received his recall.

[2] On the missions of Bancroft and Castellón, see Williams, *op. cit.*, 67–75.

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reached him; with his communication dated at Washington September 15, 1849, the treaty with Nicaragua of June 21, 1849, was delivered to Secretary of State Clayton (D.S., 1 Despatches, Guatemala; printed, with the English version of the treaty, in House Document No. 75, pp. 104–17); that treaty is frequently (and hereinafter) called the Hise-Selva Convention, from the names of its signers; the Plenipotentiary for Nicaragua was Buenaventura Selva, "Chargé de affairs . . . near the United States Legation in Central America" (the communication of Hise of September 15, 1849, with a reproduction of the map therewith and also the English version of the Hise-Selva Convention, are in Manning, *op. cit.*, III, 375–86).

During his mission in Central America, Hise signed four treaties on behalf of the United States, for only one of which, the treaty with Guatemala of March 3, 1849 (Document 135), he had authority. The other three treaties, which were signed by Hise at Guatemala without full powers, were these: (*a*) the Treaty of Peace, Amity, Commerce, and Navigation with Honduras of May 28, 1849 (D.S., Unperfected V1), the provisions whereof were, except for the omission of one article, almost the same as those of the treaty with the Central American Federation of December 5, 1825 (Document 50); (*b*) the Treaty of Peace, Amity, Commerce, and Navigation with Nicaragua of May 31, 1849 (D.S., Unperfected S2), which was in substance a renewal of the treaty of 1825 with the Central American Federation; and (*c*) the Hise-Selva Convention with Nicaragua, above mentioned, of June 21, 1849 (D.S., Unperfected T2). The English version of the Hise-Selva Convention is printed in Blue Book, 1856, 12–18. By the somewhat elaborate provisions of its thirteen articles, there was, *inter alia*, granted to the United States or "to a company of the citizens thereof" the exclusive right to construct, between the Caribbean Sea and the Pacific Ocean through the territories of Nicaragua, a canal or other means of communication; a contract,[1] referred to in the convention as previously made with a particular company, was in view; in Article 12 of the convention were written sweeping guaranties by the United States of the sovereignty and dominion of Nicaragua. The signing of the Hise-Selva Convention was a fact of some importance, as that convention represented a policy possible of adoption; but no steps were taken toward its ratification; it was not submitted to the Senate; and it was subsequently disapproved by the Government of Nicaragua (see the note of Eduardo Carcache, Chargé d'Affaires of Nicaragua, of December 31, 1849, in House Document No. 75, pp. 312–13; also in Manning, *op. cit.*, III, 487).

Conversations at Washington and London

The receipt at the Department of State of the Hise-Selva Convention evoked a conversation between the Secretary of State and the British Chargé d'Affaires, John F. Crampton, which was thus reported by the latter in his despatch of September 17, 1849 (F.O. 5:500, No. 80; printed in Blue Book, 1856, 1–2):

[1] For a translation of that contract of March 14, 1849, see House Document No. 75, pp. 141–45.

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Mr Clayton having requested me to call upon him at the Department of State, said that he wished to converse with me frankly and confidentially upon the subject of the proposed passage across the Isthmus, by way of Nicaragua and the River San Juan, with regard to which he had long felt a great deal of anxiety,—an anxiety lately very much increased by intelligence he has received from Mr Elijah Hise, who has arrived at Washington from Guatemala, where he has been for some years [1] Chargé d'affaires of the United States.

Mr Hise has, it appears, upon his own responsibility, and without instructions either from the late or from the present Administration, signed on the part of the United States, a treaty with the State of Nicaragua, by which the latter grants to the United States, an *exclusive* right of way across her territories, including therein the River San Juan, for the purpose of joining the two Oceans by a Canal across the Isthmus. The treaty contains a number of provisions, such as stipulations for the construction of forts and military works upon the banks of the San Juan for the protection of the proposed passage. These Mr Clayton enumerated to me, but he read to me, at length, the article which he regards as the most objectionable in the Treaty, by which it is stipulated that the United States guarantees to Nicaragua for ever the whole of her territory, and promises to become a party to every *defensive war* in which that State may hereafter be engaged for the protection of that territory.

To the whole of this treaty, as well as to the "absurd stipulation" which he had just read, Mr Clayton said, that it was scarcely necessary to remark that he was entirely opposed. His views and wishes with respect to the construction of a canal across the Isthmus by way of Nicaragua were, he observed, known to me, and had been, as I was aware, communicated by his direction to Her Majesty's Government—these would, he trusted, have convinced Your Lordship that the Government of the United States have no views of exclusive advantage to themselves in this matter; he felt most anxious that the signature of the present treaty by Mr Hise should not produce a contrary impression in any quarter; and with this view he proceeded to read to me a portion of the instructions which have been given to Mr. Squier, who has been lately sent as United State's Chargé d'affaires to Nicaragua; by these Mr Squier is directed not only not to negotiate any treaty with that Government on the subject of a passage across the Isthmus, but not to give his support or countenance to any Contract entered into by private Citizens of the United States with Nicaragua, on that subject, of an exclusive nature, or such as might bring the United States into Collision with any other Power.

The signature of the present Treaty has, Mr Clayton remarked, placed the Government of the United States in a most embarrassing situation. You know, he said, that the Government have no majority in the Senate;—You know that the treaty will be called for by Congress;—the substance of it indeed has already found it's way into the Newspapers;—you are aware of the opinion which, whether right or wrong, is generally entertained in this country of the claim of the Mosquito Chief to any part of the territory claimed by Nicaragua; and you can form an idea of the eagerness with which the party opposed to the Government will avail themselves of the opportunity of either forcing us into collision with Great Britain on this subject, or of making it appear that we have abandoned, through pusillanimity, great and splendid advantages fairly secured to the country by Treaty. It will require great caution on both sides, said Mr Clayton, to prevent the two Governments being brought into collision on account of this intrinsically worthless country.

Mr Clayton concluded by saying that he would immediately send for Mr Abbott Lawrence, who is now at Boston preparing for his departure for England on the 26th instant, and that he would put him into full possession of the views of the United State's Government with regard to this subject. He begged me in the mean time to communicate the substance of what he had said to me to Your Lordship.

In advance of any word from London as to the interview had by Rives with Palmerston, another conversation took place (September 30) between Clayton and Crampton, in which President Taylor

[1] Hise was not at Guatemala, his post, for more than about seven months.

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participated; the British Chargé d'Affaires thus reported its tenor in his despatch of October 1, 1849 (F.O. 5 : 501, No. 85; printed nearly in full in Blue Book, 1856, 2–5; Clayton was furnished with a copy of this despatch; see 6 Clayton Papers, 1119–29):

I had the honour of informing Your Lordship in my despatch No 80 of the 17th ultimo, that it was Mr Clayton's intention to send for Mr Lawrence, in order to put him, before his departure for England, fully into possession of the views of the United States' Government with regard to the project for making a Canal across the Isthmus by way of the Lakes of Niceragua and the River St John's; the more especially, that this question has been rendered one of great embarrassment to the United States' Government by the signature of a treaty on the subject by Mr Hise, the American Chargé d'affaires at Guatemala, with the Niceraguan Government, and by the conflicting claim of Mosquito, supported by the British Government.

Mr Lawrence was not however able to come to Washington before leaving this country, and Mr Clayton is therefore about to address to him a detailed instruction upon this matter for communication to Her Majesty's Government.

Mr Clayton, nevertheless, yesterday, took an opportunity of entering upon the subject with me, with greater earnestness and at greater length than on any previous occasion; and I am the more anxious to report accurately to Your Lordship the substance of his remarks, from the circumstance, that the President who happened to come into Mr Clayton's room upon other business, on being informed of the subject on which we were engaged, waived all ceremony, and joined in our conversation with great frankness, and every appearance of a wish to make proof of the most friendly feelings towards Her Majesty's Government, by evincing a disposition to deal with entire openess with regard to the affair in question.

The junction of the two Oceans by a Canal, Mr Clayton observed, was an object so important to the whole of the commercial world, that it was matter for surprize that an attempt had not long since been made to effect it. The increase of population on the Western Coast of this Continent had, however, now rendered it certain that such an attempt would ere long be made. The Government of the United States are strongly in favour of such an undertaking; but they are as earnestly opposed to it's execution being made a subject for jealousy, by an attempt on the part of any one Nation to monopolize to itself either the credit due to such an enterprize or the advantages to be derived from it when effected. It should in their view be rather made a bond of peace and good understanding by being brought about by a combined effort, and for the general benefit of mankind.

That great applause in certain quarters, and a certain sort of popularity might be gained by the Government of either of the two Countries by an attempt to effect this work upon a principle of exclusive advantage, Mr Clayton observed, there could be no doubt. But the United States Executive, disclaimed any such wish, but desired, on the other hand, not to be driven to adopt any measure for obtaining such exclusive advantage. Such popularity or applause would in their opinion be dearly bought by the jealousies and misunderstandings between nations which would be the inevitable result; and this it was the study of the United States Government to avert.

The two countries, Mr Clayton continued, most deeply interested in this work, are, there can be no doubt, Great Britain and the United States. Their interest in it indeed, seemed to him to be identical. Their entire agreement with regard to it was therefore an object of paramount importance.

It was with this feeling, he said, that the United States' Government would entirely disapprove of the treaty signed by Mr Hise with the State of Niceragua, unless they were driven to adopt it to counteract the exclusive claim of some other country. That Treaty both secured exclusive advantages to the United States with regard to the proposed canal which they did not wish, under any circumstances, to possess, and threatened, besides, to bring them into collision with Her Majesty's Government upon the Mosquito question pending between them and the State of Niceragua.

What the United States Government would now propose, therefore, was this:— that the United States should abandon the treaty signed by Mr Hise; and,

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instead of ratifying it, should propose simultaneously with Her Majesty's Government, another treaty to Nicaragua by which no exclusive advantage should be conferred on any party, and the great object of which should be to guarantee the safety of a Company of Capitalists, to whom a Charter should be granted by Nicaragua on reasonable terms for the execution and maintenance of the work. This Company Mr Clayton would have formed upon no exclusive principle as regards the Shareholders, while it should be regulated as regards the rate of Toll to be levied, and on such other points as might appear necessary, by the Governments guaranteeing its safety and undisturbed possession. The Government of Nicaragua would of course have no power to levy any other dues than custom duties on articles imported for Her own consumption; the Transit from Ocean to Ocean being left free. The sole fact of the existence of such treaties between Great Britain and Nicaragua, and between Nicaragua and the United States, would in Mr Clayton's opinion be quite sufficient to ensure the undisturbed execution of the work;—but he would propose that every other Power which should conclude a similar Treaty with Nicaragua and offer a similar guarantee should be admitted on equal terms to all the advantages of the Canal. It would be by such an arrangement that the character which it ought to possess would be conferred on this Great Undertaking.

These considerations if fairly laid before Her Majesty's Government would, the United States Government are persuaded, induce Her Majesty's Government to consent to make such an arrangement with regard to the Mosquito claim, as would prevent it's being an obstacle to the design in question. The Mosquito claim, if disconnected with the question of a passage across the Isthmus, is not, the United State's Government apprehend, one to which any great importance can be attached by Her Majesty's Government; and they cannot perceive, that, if the object which they think it probable that Her Majesty's Government, in common with themselves, have in view of preventing an injurious monopoly being established by any one nation in the quarter in question, is obtained, there can be any real difficulty in arranging the question as far as the Mosquito nation is involved in it.

I here remarked to Mr Clayton, that whatever might be the views of Her Majesty's Government with regard to the proposed passage across the Isthmus,—and I was at present entirely unacquainted with them,—the claims of the King of Mosquito to the territory in question, and to the protection of Her Majesty's Government were of so clear and indisputable a nature, that I was not warranted in supposing for a moment, that Her Majesty's Government would recede from the position which they had assumed in regard to them. I was anxious therefore to learn in what manner Mr Clayton would suggest that an arrangement could be effected which would meet this difficulty.

Mr Clayton observed "you affirm the Mosquito title,—we deny it.—There we "are at issue; and if that controversy be not arranged amicably, the canal will "probably never be made for either of us." He thought it could be easily settled by a little mutual forbearance, but he would prefer to leave to Your Lordship the suggestion of the best means of effecting an object so desirable. In the course of our conversation, however, some of the circumstances of the case were adverted to, which seemed to him to offer the means of arriving at a solution of the difficulty, which would be satisfactory to all the parties concerned. The only part of the territory claimed for the Mosquito Nation, he observed, which is of the least importance to Nicaragua,—and that importance depends entirely upon it's connection with the question of the proposed Canal,—is that part embracing the river St John's and the territory claimed by Nicaragua from the Machucha rapids to the Sea. Now the Mosquito Nation, according to every account which the United State's Government have been able to obtain of them, do not amount altogether to more than one thousand souls;—and even this small number is stated to be on the decrease. The cession therefore of this portion of the territory claimed for them by England for a reasonable indemnity, to be arranged and paid by England Herself if Nicaragua refused to pay it, and their settlement in some other part of the country, beyond the limits claimed by Nicaragua, under the guarantee and protection of Her Majesty's Government, might, Mr Clayton hoped, be easily effected without the smallest injury to the Mosquitos, or any real abandonment of their interests by the British Government. Nice-

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ragua might in perfect accordance with Her claim under the Spanish title, which the United States hold to be valid, proceed, as the United States have often done in similar cases, to extinguish the Indian title by granting an annuity to the Indians; and as it is clear that the real object of Nicaragua in maintaining that claim is involved in considerations regarding the project for a canal across the Isthmus, there can be little doubt, that that point once satisfactorily settled, she would cheerfully accede to such terms.

Mr Clayton then recurred to the embarrassing situation in which the friends of this great enterprize would be placed, should Her Majesty's Government continue to oppose the Mosquito claim to the arrangement now proposed. The existence of the Treaty signed by Mr Hise and the privileges conferred by it on the United States, are, he said, no secrets in this Country. The universal feeling would be for it's adoption; and a reason for clamouring for it's instant ratification would be, that this might defeat what would be represented and believed to be, a plan on the part of Great Britain, to secure for Herself a monopoly of the most eligible passage between the two Oceans. The Executive Government of the United States would be without excuse for witholding the treaty from the consideration of the Senate; and it is impossible to doubt, under the influence of the publick excitement which there is already an evident design to rouse with regard to this question, what would be the result. On the other hand were the Administration enabled to submit to Congress an arrangement such as is now proposed, and in which Her Majesty's Government would be in friendly concurrence with the United State's Government for this great work, every pretext would be taken away from the most unreasonable, and every chance of future misunderstanding between the two Governments avoided. Mr Clayton considered that this question could never be settled amicably unless both Great Britain and the United States withdrew all claim to the territory of Niceragua and Costa Rica. If either of the two Governments held possession of the country on either side of the Canal, it would hold an inadmissible advantage over the other; in a word, said he, let us both abandon all claim to what is called Niceragua and Costa Rica, and lend the countenance of both governments to the construction of a ship Canal, if it be found to be practicable; if you refuse this offer, we are driven in self defence, to adopt the Treaty.

In the whole of these observations General Taylor cordially concurred; the attempts, he remarked, which were making, and would be made in many quarters to produce a misunderstanding or a collision between the two Governments on this matter were, in his opinion, only to be met by perfect frankness and fair dealing; it was his earnest wish, therefore, that the matter should be laid in this spirit before Your Lordship; and he expressed an anxious wish that the question might be promptly arranged equally to the honour and advantage of both Countries.

Mr Clayton requested me to state to Your Lordship that he would wish that my present report of his own and of the President's remarks should be considered by Her Majesty's Government as strictly confidential.

Of the conversation had with Palmerston by Rives on September 24, there are available two reports; one of them is this paragraph of the instruction to Crampton of the following November 9 (F.O. 115: 104, No. 55; printed in Blue Book, 1856, 6–7):

What Mr Rives said to me was much to the same effect as what the President and Mr Clayton said to you. I said to Mr Rives, in reply, that the British Government have no selfish or exclusive views in regard to a communication by canal or Railway across the Isthmus from sea to sea; that Her Majesty's Government wish that any undertaking of this sort which they may have the means of contributing to facilitate should be equally open to and available by all the Nations of the World, and should be a highway of Commerce for all men who may have occasion to use it; and I said that if the United States' Government had any arrangement to propose which would have the effect of placing this Line of Communication out of the reach of disturbance by any conflicts which from time to time may happen between Nations who may find themselves unfortunately engaged in war, Her Majesty's Government would be glad to receive any such

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Proposal and would take it into their most attentive consideration, but I said that I entirely concurred with Mr Rives, and with what I understood him to represent as being the opinion of the United States' Government that no one Country ought to endeavour to monopolize any such Line of Communication to the exclusion and detriment of other Nations.

The account given by Rives of the conversation of September 24 is this (D.S., 32 Despatches, France, No. 3, September 25, 1849):

yesterday I called upon Lord Palmerston at his house in Carlton Gardens for the purpose of holding the interview with him which had been previously arranged. He gave me a very cordial reception, & took occasion to say that he had come up to London from the residence of Viscount Melbourne in the country, where he had been passing some days, solely for the sake of seeing & conversing with me. After some conversation of a general nature, I stated to him that there being a sort of *interregnum* at present in the usual diplomatic relations of the two countries, owing to the departure of Mr. Bancroft & the postponement, for a few weeks, of Mr. Lawrence's arrival, you had instructed me while on my way to Paris, to call upon his Lordship & converse with him on a matter which was more than ordinarily urgent and critical—that it was quite unnecessary, I persuaded myself, to assure his Lordship that the President was anxious to preserve the most cordial good understanding with her Britannic Majesty's Government—that in proportion as that desire was sincerely felt, it was seen with no little concern that there was one question, which, unless great prudence & caution were observed on both sides, might involve the two governments unwittingly in collision—that, shortly before I left the United States, a letter[1] from the British consul at New-York had been published asserting in very positive & unqualified terms an exclusive claim for the Mosquito Indians, to the ownership & sovereign jurisdiction of the mouth & lower part of the River San Juan de Nicaragua—that the United States had no disposition to intermeddle, in any pragmatical spirit or with views in the slightest degree unfriendly to Great Britain, with that question, but they were necessarily parties to it in their own right—that citizens of the United States had entered into a contract with the state of Nicaragua to open, on certain conditions, a communication between the Atlantic &

[1] That letter of Anthony Barclay to Simeon H. Ackerman, dated July 30, appeared in the New York Herald for August 1, 1849; the original is in D.S., Miscellaneous Letters, July–August 1849, enclosure to the letter of Ackerman and Joseph L. White of August 8, as follows:

> Her Britannick Majesty's Government being informed that an Agreement for the establishment of a communication between the Atlantic and the Pacific has been concluded between the Government of the State of Nicaragua, and Mr Clapp and Dr Brown, Citizens of the United States, and Agents of the "New York and New Orleans Steam Navigation Company",—of which company you apprized me that you are one,—from the execution of which agreement, it is inferred that the Government of Nicaragua has led the New York and New Orleans Company to suppose that that Government is competent to dispose of the exclusive right of navigating the St John's River; such Agreement likewise containing a clause binding the Company to build a Public Store at St John's: I am instructed officially to inform the New York and New Orleans Steam Navigation Company,—which I take leave to do through you,—that the Boundary line of the Mosquito Kingdom touches the St John's River at the Machuca Rapid, about 30 Miles below the Lake Nicaragua and that from thence to the Mouth of the St John's the Navigation of that River belongs to Mosquito.
>
> I have likewise to inform the Company that the Port of St John's, now called Grey Town, at which they have agreed with the Nicaragua Government to build a Store, also belongs to Mosquito; that Her Majesty's Government is bound to protect the King of Mosquito in the exercise of the Territorial Rights which he possesses over Grey Town, and over the Lower part of the St John's River, and that the Government of Nicaragua has entered into an agreement in regard to places where it has no competence.

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Pacific oceans by the River San Juan & the Nicaragua Lake—that the Government of the United States, after the most careful investigation of the subject had come undoubtingly to the conclusion that upon both legal & historical grounds the State of Nicaragua was the true territorial sovereign of the River San Juan as well as of the Nicaragua Lake, & that it was therefore bound to give it's countenance & support, by all proper & reasonable means, to rights lawfully derived by their citizens under a grant from that sovereign—that the United States, moreover, as one of the principal commercial powers of the world & the one nearest to the scene of the proposed communication & holding besides a large domain on the western coast of America, had a special & deep national interest in the free & unobstructed use, in common with other powers, of any channel of intercourse which might be opened from the one sea to the other,—& that moved by a proper regard for that interest, it had probably already concluded, or would soon do so, a Treaty with Nicaragua for securing a transit for its commerce & public stores by the route in question, on terms open alike to all other nations.

I then proceeded to observe to Lord Palmerston that the Government of the United States was particularly desirous that there should be no misconception of its objects & motives in this matter by her Britannic Majesty's Government & that it was of the highest importance that both Governments should be made acquainted, frankly, with the views & intentions of each other—that it had sometimes happened in military operations that detachments of the same army had gotten engaged with each other, *in the dark*, in bloody strife, and so in civil & political affairs nations as well as individuals, in ignorance of each other's real views & under the influence of a natural but unfounded distrust, were often committed in serious opposition to each other, when a frank & unreserved communication, in the first instance, of their respective objects would have brought them to co-operate heartily in the pursuit of a common end—that the United States sought no exclusive privilege or preferential right of any kind in regard to the proposed communication, & their sincere wish, if it should be found practicable, was to see it dedicated to the common use of all nations on the most liberal terms & a footing of perfect equality for all, securing it beforehand, by proper stipulations, against unreasonable & oppressive exactions for the use of it, either from the States thro' whose territories it should pass, or the individuals or companies who might be authorized to construct it—that the United States would not, if they could, obtain any exclusive right or privilege in a great highway, which naturally belonged to all mankind, for they well knew that the possession of any such privilege would expose them to inevitable jealousies & probable controversies which would make it infinitely more costly than advantageous—that while they aimed at no exclusive privilege for themselves, they could never consent to see so important a communication fall under the exclusive controul of any other great commercial power—that we were far from imputing to her Britannic Majesty's Government any views of that kind, but *Mosquito* possession at the mouth of the San Juan could be considered in no other light than *British* possession, and his Lordship would readily comprehend that such a state of things, so long as it continued, must necessarily give rise to dissatisfaction & distrust on the part of other commercial powers. Would it not, then, be wise, I said to Lord Palmerston, that Great Britain & the United States should come to a frank & manly understanding with each other, & unite their influence for the accomplishment of an object of the highest importance, to both of them as well as the rest of the world, instead of hazarding the final loss of so great an object by jarring and divided councils.

Lord Palmerston listened to these observations throughout with marked & earnest attention, shewing the just sense he entertained of the importance & delicacy of the question. He was very glad, he said, to have a full & free conversation with me about it—he had had some conversation with Mr. Bancroft in relation to it, but as he was going away, he had not thought it necessary to enter into much detail with him upon the subject. He then gave a review of the origin & progress of the controversy with Nicaragua. He said that from a very early period the Mosquito Indians had been treated by the British Government as a separate & independent state—that they had what was called a King, who by the bye, he added in a tone of pleasantry, was as much a king as I or you—but nevertheless the British Government had, from time to time & for more than a century, given them tokens of recognition & protection as

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an independent state—in this condition of things Nicaragua, which had never before been in possession of any part of the Territory claimed by the Mosquitos, took forcible possession of the town & port at the mouth of the San Juan River—that the British Government, as the ancient & in some sort hereditory protector of the Mosquitos, had given the Nicaraguans notice to quit, which as they did not heed, a British naval force was sent there & drove them away—that after being thus put out of possession, the Government of Nicaragua had undertaken to grant to citizens of the United States a right to make a public highway thro' a territory from which they had just been expelled—that the transaction was, on their part, fraudulent & *mala fide*, & was like the case of a man undertaking to sell a horse which was in the possession of & claimed by another—that the authorities of Nicaragua, being thwarted in their object by the interposition of the British Government, got into a bad humour & wished to draw the United States into their quarrel by assuming to grant to citizens of the latter the privilege of opening the communication in question by the River San Juan—that, under these circumstances, the British Government had thought it just & proper to give notice to the parties interested in the United States that the Government of Nicaragua had entered into a contract with them in regard to places where it had no competence—that the suspicion seemed to be entertained by some in the United States that the British Government wished to plant a new colony in America on the San Juan, for which there was not the slightest foundation, as they had already more colonies than they could manage—*that as to any idea of their holding exclusive possession of the mouth of the San Juan as the key of the contemplated communication between the Atlantic & Pacific, nothing could be farther from their minds*—that it was highly desirable, in the interest of humanity & of the general commerce of the world to promote the civilization & improvement of those countries in central America to which nature had been very lavish in some of her gifts—there were feuds, too, & dissentions among some of them, particularly Nicaragua & Costa Rica, which it would be a good office in other Governments to use their influence to compose—that Costa Rica had made them offers respecting a communication to the Pacific, which if I understood correctly the very brief allusion made to the subject by Lord Palmerston, had not been carried into any formal agreement or convention—and finally his Lordship said that if any plan could be suggested by which Great Britain & the United States could unite in promoting by their joint influence & mutual co-operation the opening of the great channel of communication by Lake Nicaragua & declaring it a common highway for the use & benefit of all nations, it would receive the most favorable consideration of Her Britannic Majesty's Government.

I have endeavoured to give you in full, & in his own words as far as possible, the observations made by Lord Palmerston in response to those I addressed to him, & in explanation of the course & position of the British Government in relation to the Mosquito Territory. His conversation was marked throughout by a tone of perfect frankness, & the most conciliatory & friendly spirit towards the United States. You will see that I was not mistaken in supposing that the letter of the British consul at New-York had been authorized by him. But the explicit & unequivocal disavowal made by him of any purpose of exclusively occupying the mouth of the San Juan as the key of this great channel of communication between the Atlantic & Pacific, which I have been careful to record in the very words used by him, furnishes satisfactory evidence, I think, that the policy of the British Government has been, as I suggested in my despatch No. I. it might be, to prevent by measures of precaution the possible monopoly of that communication by others, rather than to monopolize it for it's own benefit. There can be no doubt that jealousies have been industriously instilled into the Government & the public mind here respecting the alleged design of the United States to obtain a controul over all the proposed lines of communication between the Atlantic & Pacific oceans thro' the central parts of America. To guard against the consummation of such a monopoly, if circumstances should give colour to the imputation of such a design to the Government of the United States, the British Government has been, with its usual forecast, gradually extending & fortifying the Mosquito claim at the mouth of the San Juan in the manner pointed out in my last despatch, but with no view, we are bound to believe by the frank & manly declarations of Lord Palmerston recited above, to use it as an instrument of monopoly for their own

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advantage, when they should be satisfied that no such monopoly was sought by the United States for theirs. The mutual explanations, therefore, given in the interview of yesterday in that spirit of frankness which ought ever to characterize the intercourse & proceedings of two such nations as the United States & Great Britain, cannot but pave the way for a better understanding & final co-operation, I trust, between the two Governments in reference to an object worthy by its grandeur & the vastness of its consequences to engage the united efforts of all the commercial powers of the world.

Having observed that Lord Palmerston in asserting the right of the Mosquito Indians to be considered as an independent nation laid particular stress on the circumstance that Nicaragua, which claimed the sovereign jurisdiction over their territory, had never, but for a very brief period, had actual possession of any portion of it, I said to him that, without any formal discussion of the question, I would state to him in a few words what was the doctrine held by the Government of the United States upon the subject—that upon our continent where so many Indian tribes were included within the general jurisdictional limits of the different civilized nations of European origin which had colonized & settled the country, the relation subsisting between the aborigines & the European settlers was a most important branch of public law—that it had been thoroughly studied & investigated, & solemnly settled by the enlightened decisions of our highest national Tribunals upon the authority of European, & especially *English*, law & practice—that the Spaniards the English, the Dutch & the French, who had established colonies in different parts of America were all governed by the same principle in their intercourse & relations, with the Indian tribes—by none of them had it ever been held necessary, in order to vest in them the general territorial sovereignty over the Indian tribes within the limits respectively appropriated by them, that they should actually have occupied the territory over which these tribes of aborigines were scattered—that the ultimate property or high domain of the Indian Territory was always considered as vested in the nations colonizing the country, by the mere fact of discovery or settlement anywhere within the limits declared to be assumed by them—that upon this principle the colonial charters executed by the crown in the time of James I & afterwards, conveyed immense territories, by widely separated parallels of latitude & from sea to sea, tho' at the time they were known to be occupied almost entirely by wandering tribes of Indians & there was hardly a white inhabitant in them—the same principle had been acted upon by Great Britain in various international compacts—by the treaty of Utrecht, she obtained from France a cession of Acadie or Nova Scotia—by the treaty of Paris, she obtained from the same power the farther cession of Canada & it's dependencies, & from Spain the Floridas, while on her part she yielded to France the vast regions lying west of the Mississippi, thus passing from one to another in full dominion & sovereignty immense territories which at the time were in the actual occupation of numerous Indian tribes—that it resulted from this long course of universal usage & conventional practice that actual possession was in no wise necessary to the exercise of a rightful sovereignty over Indian territory,—& that tho' Indian tribes were possessed of some of the attributes of a separate political existence, such as that of governing their communities by their own internal laws & also of sustaining the relation of peace & war, yet it was impossible to recognize in them a complete national independence, such as that which was claimed for the Mosquitos, without subverting the whole fabric of public law belonging to our peculiar position, which had grown up with the general concurrence & assent of all the civilized nations of Europe. To these remarks Lord Palmerston replied by saying that he fully admitted the general doctrine for which we contended—that it was the principle on which they conducted their relations with the Indian tribes in Canada—but that the case of the Mosquitos was *sui generis* & stood upon its own peculiar circumstances. I then said that the farther discussion of the Mosquito title would be a matter rather for curious & abstract speculation than of any great practical importance if the two governments, understanding each other's real views & objects, & recognizing their legitimacy, could agree upon some plan of carrying them out in harmony & concert—that tho' I was not authorized to make any suggestion upon the subject, it seemed to me that if Great Britain would do what she had the unquestionable power to effect with the Mosquitos & exert

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her influence with Costa Rica, while the United States employed their good offices with Nicaragua, every political impediment to the execution of the great work they both desired to see accomplished would be speedily removed, & that placing it then under a solemn inter-national guarantee to protect it's freedom & to secure it's benefits alike to all, every condition would be fulfilled that the most jealous caution might suggest on the one hand or the most liberal & enlarged policy demand on the other. Lord Palmerston received this suggestion in the most favorable manner, & as well by his way of responding to it, as by the tone & spirit of his whole conversation, left me under the impression that he was sincerely desirous of acting in friendly concert with the Government of the United States in promoting the accomplishment of an object of equal & common interest to both nations.

The despatch of Rives of September 25, 1849, was received at the Department of State not later than October 19; by October 14 there came from Squier the treaty with Nicaragua which he had signed at León on September 3, 1849, with the Plenipotentiary of Nicaragua, Hermenegildo Zepeda, and hereinafter called the Squier-Zepeda Treaty (D.S., Unperfected U2; text in Blue Book, 1856, 72–89; see the despatch of Squier of September 10, 1849, D.S., 2 Despatches, Guatemala, No. 4, printed with slight omissions in House Document No. 75, pp. 168–73, and in full in Manning, *op. cit.*, III, 360–74). In general the articles signed by Squier were based on the treaty with the Central American Federation of December 5, 1825 (Document 50), with various changes and additions; but in Article 35 of the treaty were written detailed canal clauses which ran flatly counter to the Mosquito claim of coastal sovereignty and to the *de facto* situation at Greytown and which were framed in the light of a contract between Nicaragua and the American Atlantic and Pacific Ship Canal Company signed seven days earlier under the supervision of Squier (for the text of the contract of August 27, 1849, see Blue Book, 1856, 19–24; also in Manning, *op. cit.*, with the cited despatch of Squier); the English version of Article 35 of the treaty reads thus (collated with the original):

It is and has been stipulated, by and between the high contracting parties:—
1st That the citizens vessels and merchandise of the United States shall enjoy in all the ports and harbours of Nicaragua, upon both oceans, a total exemption from all port charges, tonnage, or anchorage duties, or any other similar charges now existing, or which may hereafter be established, in manner the same as if said ports had been declared Free Ports. And it is further stipulated, that the right of way or transit across the territories of Nicaragua by any route or upon any mode of communication at present existing, or which may hereafter be constructed, shall at all times be open and free to the Government and citizens of the United States, for all lawful purposes whatever; and no tolls, duties or charges of any kind shall be imposed upon the transit, in whole or part, by such modes of communication, of vessels of war or other property belonging to the Government of the United States, or on public mails sent under the authority of the same, or upon persons in its employ, nor upon citizens of the United States nor upon vessels belonging to them. And it, is also stipulated that all lawful produce, manufactures, merchandise, or other property, belonging to citizens of the United States, passing from one ocean to the other, in either direction, for the purpose of exportation to foreign countries, shall not be subject to any import or export duties whatever; or if any citizens of the United States having introduced such produce, manufactures, or merchandise, into the State of Nicaragua, for sale or exchange, shall within three years thereafter, determine to export the same, they shall be entitled to drawback equal to four-fifths of the amount of duties paid upon their importation.

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2d And inasmuch as a contract was entered into, on the twenty seventh day of August 1849, between the Republic of Nicaragua and a company of citizens of the United States styled the "American Atlantic and Pacific Ship Canal Company," and in order to secure the construction and permanence of the great work thereby contemplated, both high contracting parties do severally and jointly agree to protect and defend the above named company, in the full and perfect enjoyment of said work, from its inception to its completion and after its completion, from any acts of invasion, forefeiture or violence, from whatsoever quarter the same may proceed; and to give full effect to the stipulations here made, and to secure for the benefit of mankind the uninterrupted advantages of such communication from sea to sea, the United States distinctly recognizes the rights of sovreignty and property which the State of Nicaragua possesses in and over the line of said canal, and for the same reason guarantees positively and efficaciously the entire neutrality of the same, so long as it shall remain under the control of citizens of the United States, and so long as the United States shall enjoy the priveleges secured to them in the preceding section of this article.

3d But if by any contingency the above named, "American Atlantic and Pacific Ship Canal Company," shall fail to comply with the terms of their contract with the State of Nicaragua, all the rights and priveleges which said contract confers, shall accrue to any company of citizens of the United States, which shall within one year after the official declaration of failure, undertake to comply with its provisions, so far as the same may at that time be applicable, *provided*, the company thus assuming said contract, shall first present to the President and Secretary of State of the United States, satisfactory assurances of their intention and ability to comply with the same; of which satisfactory assurances, the signature of the Secretary of State, and the seal of the department shall be complete evidence.

4th And it is also agreed on the part of the Republic of Nicaragua, that none of the rights, priveleges and immunities guaranteed, and by the preceding articles, but especially by the first section of this article, conceded to the United States and its citizens, shall accrue to any other nation, or to its citizens, except such nation shall first enter into the same treaty stipulations for the defence and protection of the proposed great interoceanic-canal, which have been entered into by the United States, in terms the same with those embraced in section 2d of this article.

Upon receipt of the Squier-Zepeda Treaty with Nicaragua of September 3, 1849, it was the subject of a conversation between Clayton and Crampton (October 14) which is thus reported in the despatch of the latter of October 15, 1849 (F.O. 5 : 501, No. 89; printed in large part in Blue Book, 1856, 5):

Mr Clayton yesterday informed me that he had received intelligence from Mr. Squier, the United States Minister lately sent to Niceragua, that Mr Squier had in the early part of last month concluded a Treaty with that State regarding the construction of an inter-oceanic canal across its territory.

This Treaty, Mr Clayton remarked, although it contains some articles of which he disapproves, is less objectionable than that signed by Mr Hise with the Niceraguan Govt: for the same purpose, to which I alluded in my dispatch[1] to Your Lordship marked No. 85 of the 1st instant.

The Government of the United States will, however, he said, suspend their decision with regard to the present Treaty, as well as with regard to that signed by Mr Hise, until they shall [have] an opportunity of learning the views of Her Majesty's Government with regard to the proposals and considerations upon the subject to which these treaties relate, which I had the honour of conveying to Your Lordship in my above named despatch.

A copy of the Treaty, Mr Clayton added, will be transmitted to Mr Lawrence for Communication to Your Lordship, by the Packet of the 24th instant, together with an instruction to that Minister to lay the "whole thought" of the United States Government in regard to it, before Her Majesty's Government.

[1] Cited and quoted above.

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I have now the honour of inclosing a newspaper which contains the copy of a fresh Contract which has been formed between An American Company and the Niceraguan Government for the construction of the Canal in question, which Mr Clayton informs me, was drawn up under the supervision of Mr Squier, and in concordance with the provisions of the Treaty which he was engaged on negotiating.

The general tenour of this Contract is in accordance with the instructions given to M^r. Squier on the subject, more particularly the article 36, which stipulates that vessels of all nations shall be permitted to pass through the proposed Canal, subject to no higher rates or charges than those imposed on vessels of the United States; some of the stipulations however, Mr Clayton observed, were objectionable, particularly that of the Preamble, which seems to confine the Directorship of the Company to American Citizens, and that of the 9th article which requires that a majority of the shareholders shall be American citizens. The United States Government, he said, wish to see nothing of an exclusive character in any part of the arrangement. Mr Clayton conceives however that should the joint action of Her Majesty's Government with the Government of the United States on the matter be once secured, there can be little difficulty in remodelling the Contract as to these points, or as to such others as may be agreed upon.

I take this opportunity of inclosing a newspaper[1] containing a Report of Mr Squier's reception by the Niceraguan Government, and of the Speech which he delivered on that occasion. This will be found to coincide substantially with the account of Mr Squiers language given by Mr Chatfield in his dispatch No 65 of the present year, a duplicate of which was forwarded to Your Lordship in my dispatch No 83 of the 1st instant.

With regard to the allusion made by Mr Squier to Mr Monroe's doctrine respecting the colonization of any part of the American continent by a European Power, Mr Clayton remarked that the present Administration of the United States in no way adopted that principle, and that Mr Squier was not instructed to make any allusion to it in his communications with the Niceraguan Government.

Negotiations at London

The first instructions to Lawrence on the subject of the negotiation were dated October 20, 1849. A moiety of that somewhat lengthy communication was devoted to argument of the Mosquito question; the suggestion was made that the United States and Great Britain should by treaty guarantee the independence of Nicaragua, Honduras, and Costa Rica, acknowledging the limit of those states on the east to be the Caribbean Sea, with compensation to the Mosquito Indians; it was said that the United States was willing and anxious that Great Britain should enter into a treaty with Nicaragua similar to that signed by Squier on the previous September 3, the Squier-Zepeda Treaty; a written assurance from Palmerston to the effect that Great Britain disavowed any intention to colonize any part of Nicaragua or Costa Rica would, it was stated, be highly gratifying to the United States; Palmerston was to be informed that the United States would gladly make a treaty with Great Britain binding both nations never to colonize, annex, settle, or fortify any part of the ancient territory of Guatemala, meaning Nicaragua, Costa Rica, Honduras, and the entire Mosquito coast; in the event of the rejection of the American proposals, the alternative put forward was the adoption by the United States of the Hise-Selva Convention, which Lawrence was directed to communicate to Palmerston; and it was recognized that if this course

[1] This was the Daily National Intelligencer of October 12, 1849.

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were pursued (with Great Britain maintaining her assertion of the Mosquito title), a collision could hardly be avoided. But the text of the instruction of Clayton does not readily lend itself to summary and accordingly follows in full (D.S., 16 Instructions, Great Britain, 50–70):

With a despatch[1] under date the 2d of May last, your predecessor was furnished with an extract from that part of the instructions to Mr. Squier, Chargé d'Affaires of the United States to Guatemala, which related to the Mosquito question, and was instructed to make known to the British Ministry the President's views in regard to it. It appears, however, that he had but little conference upon the subject with Lord Palmerston, of which we have any knowledge. An account of one interview with his Lordship is contained in his despatch[2] No 143, of the of August last. As the date of the conference is not mentioned, the Department has no means of determining whether or not it took place before or after the conclusion of the paper upon the subject which Mr. Bancroft says he had prepared for presentation to Lord Palmerston, but which he finally decided to withhold. The delay of Mr. Bancroft in complying with the instructions of the Department, or in communicating information relative to his proceedings, if any had taken place, rendered it imperative, in the judgment of the President, that Mr. Rives should be directed to proceed to his post by the way of London, for the purpose of ascertaining what Mr. Bancroft may have done or omitted, and of endeavoring to carry out the instructions to the latter, so far as he could, compatibly with his unaccredited character and as the state of the question might render necessary, prior to your arrival. The Department has received three letters from him, under date the 14th, the 24th [21st] and 25th ultimo, the first referring to Mr. Bancroft's No 143, and stating that he had sought an interview with Lord Palmerston, who was absent from London but was expected to return in about a week—the second stating that he expected an interview with Lord Palmerston on the 25th [24th] ultimo—and the last stating the result of that interview on the 25th [24th], which Mr. Rives considered highly favorable.

It being apparent, however, from the intimations of Lord Palmerston to Mr. Bancroft; from the papers accompanying the despatch of the latter already referred to, and especially from the note to Mr. Castellon, of the 16th of July last, that the views of the British Ministry conflicted with those of the President to such a degree as might, if persisted in, lead to a serious misunderstanding between the two Governments, this despatch is addressed to you that no time may be lost in endeavoring to avert so undesirable a result.

It is not conceived that the occasion calls for a formal or detailed reply to Lord Palmerston's note to Mr. Castellon in support of the British pretensions. Though confident in its tone, it is obviously fallacious in its conclusions, but seeks to make amends for this, by significant allusions to the Central American States, as delinquent debtors to British subjects. It will be proper, however, to notice some of its more prominent topics, with a view to assist you in meeting objections which may orally or in writing be addressed to yourself.

Lord Palmerston declares that Mosquito did not belong to Spain. This, certainly, is a bold declaration, but it is negatived by the whole history of that country. If Mosquito did not belong to Spain, why did Great Britain so often, at the behest of the former, relinquish her attempts at colonization there? She has never been wont to submit to such requirements from nations having no right of property in the countries to which they related. It is impossible to believe that at the periods of her treaties with Spain, she doubted the territorial rights of the latter in the Mosquito shore.

By the treaty[3] of 1763, Great Britain acquired Florida from Spain. Spain held it by the same title by which she held Central America. Did Great Britain

[1] Cited and quoted in part above.

[2] Cited above.

[3] The Treaty of Paris of February 10, 1763, between Great Britain, France, and Spain, to which Portugal acceded; translation in Chalmers, Collection of Treaties between Great Britain and Other Powers, I, 467–94.

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suppose, at the period of this acquisition, that any part of Florida did not belong to Spain? Most of Florida was in the actual possession of the Indians, but Great Britain did not imagine that her proprietary rights were thereby impaired. She restored that country to Spain by the treaty[1] of 1783, and it remained in the possession of the latter until it was ceded to the United States by the treaty[2] of 1819. Is it to be for a moment supposed that we accepted those parts of Florida only which had been in the actual possession and occupation of the authorities or subjects of Great Britain and Spain? Could Great Britain have set up a title as the ally and protector of the Seminole Indians to that part of Florida in the actual occupation of that savage tribe?

The claim of Nicaragua to Mosquito is not impaired by the fact with which Lord Palmerston taunts her, that Spain has not conveyed it to her by treaty. He cannot suppose that Spain either desires or intends to recover her lost authority in Central America. But whatever may be his opinion, the British Government is precluded by its acknowledgment of the independence of that Republic from questioning the fact that it succeeded to all the territorial rights of Spain within its confines.

Lord Palmerston acknowledges that the successful revolt of the people of Nicaragua gave them the right of self government with reference to Spain. This right, however, was to be exercised within certain territorial limits which are to be ascertained by the inquiry whether or not Spain herself exercised sovereign authority within the same limits. Now, it is notorious that the Mosquitos were a tribe of savages dwelling on the verge of a country discovered by Spain, and claimed by her in virtue of the right thus acquired, which right has repeatedly been acknowledged by Great Britain in her treaties with that Power. Consequently, the right of Spain, or of her representative, Nicaragua, cannot be questioned on the ground that the latter conquered from Spain merely the right of self government, and is not weakened because neither may have chosen to subjugate those Indians, or to deprive them of their lands by occupation. Spain justly deemed herself entitled to consult her own views of policy in regard to them, as she did in regard to numerous other bands of savages within the bounds of her American possessions, a right which has always been, and still is, cherished by Great Britain herself with reference to the aborigines included within the limits of her own possessions in this hemisphere. No European nation which made discoveries, or planted colonies, in America regarded the inhabitants whom they found there, even when collected into bodies politic, respectable in point of numbers, and for the progress which they had made in the arts, like those of Mexico and Peru, as possessing rights in the soil which were not liable to defeasance if deemed necessary to the objects for which discovery and colonization were undertaken. Still less, then, could they acknowledge such a right in wandering tribes, insignificant in point of numbers, and with no title to respect for any efforts, attempted or accomplished, to emerge from barbarism. The delay or the neglect to exercise rights of sovereignty over the most contemptible tribes, did not impair the right itself, much less serve to extinguish it in favor of the tribe, or to impart to the latter any just claim to be regarded as an independent community. The discoverer uniformly asserted and exercised the right of biding his own time to extinguish the Indian title, and never acquiesced in any interference in this right from abroad. The right of Spain to an actual occupation of the Mosquito territory was not weakened by her non user. That territory was embraced within the limits of the Kingdom of Guatemala, and when the provinces into which that Kingdom was divided shook off the yoke of the mother country, they acquired all the territorial rights which that country enjoyed or possessed, within their respective confines. The right to extinguish the Indian title was one of these, which the United States can no more allow to be called in question with reference to Nicaragua, than with reference to themselves.

The right of the provinces of Guatemala to sovereignty over the Mosquito territory has not been impaired by the policy of Great Britain with reference to that tribe of Indians. If, during peace, the object of that policy was to make those savages the instruments of an illicit traffic with the Spanish settlements,

[1] Of September 3, 1783; translation in Chalmers, *op. cit.*, II, 229–48.
[2] Of February 22, 1819 (Document 41).

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and, during war, to take advantage of their hostile disposition towards Spain, which was at all times sedulously cultivated, the sovereign rights of Spain were not disturbed. They remained entire for her to employ them whenever she might choose so to do. She herself invariably showed a consciousness of the objects and motives of British policy, and took care to preserve her rights from harm by them.

Lord Palmerston asserts that the treaty of 1783 was not intended to apply to the Mosquito territory. This assertion is based upon the pretext that that treaty mentioned only the Spanish *possessions* in America; and, as Spain was not the possessor of that territory, she did not acquire any right by the stipulation of Great Britain to withdraw her subjects from the Spanish possessions. Is it not, however, notorious that, during the war which was terminated by the peace of 1783, Great Britain made her principal effort to extinguish Spanish dominion in that quarter, and that that effort was fruitless? Is it credible, then, that the Spanish negotiations should have been unmindful of this event, and should not have intended that British subjects should be prevented from forming plantations within any part of the territory which they claimed, and restricted to definite limits even for cutting woods? To seek such an advantage from the use of the word "possessions" is a distortion or arbitrary limitation of its obvious meaning, not warranted by either facts or probabilities. It is impossible that Spain could have doubted that her possessions included the Mosquito country, or, that Great Britain could have otherwise believed. In point of fact, that territory was, and continued to be, as much a possession of Spain as the greater part of the northern region of this continent, (commonly described as the British North American Possessions,) is now a possession of Great Britain.

Admitting the truth of the historical facts which are mentioned to show the tampering of British subjects and British authorities with the Mosquitos, they by no means prove that such transactions tended in the slightest degree to render questionable the sovereign rights of Spain, or that in conniving at them, the British Government meant to recognize the Mosquitos as a nation independent of the Spanish Crown. The acts referred to must have taken place contrary to the known wishes of Spain, in violation of her laws, and even of the treaties of Great Britain herself with that Power.

Some of the facts mentioned, however, seem to be far from strengthening the argument in support of which they are adduced. If the King of the Mosquitos was the independent Sovereign contended for, why was the convention with him upon the subject of absconding slaves concluded with the Governor of Jamaica? Sovereign States are equal in the eye of public law, and no treaty with a Governor of a colony can be legal unless it be ratified by the Sovereign. It is at least doubtful whether the convention referred to ever received such a sanction on the part of the British Government. If it did not, the omission must have been occasioned by a conviction either that the pretensions of the Mosquito Monarch to equality and respect, or that good faith towards Spain, would not warrant the act.

The reservation by Great Britain, in her treaty[1] of 1786, with Spain, is appealed to with an air of triumph, as if to show that she then regarded the Mosquitos as an independent nation, and interceded in their behalf pursuant to this view. The meaning of that article may best be understood by quoting it entire:

ART. XIV.

> His Catholic Majesty, *prompted solely by motives of humanity*, promises to the King of England, that he will not exercise any act of severity against the Mosquitos, inhabiting in part the countries which are to be evacuated by virtue of the present convention, on account of the connexions which may have subsisted between the said Indians and the English; and His Britannic Majesty, on his part, will strictly prohibit all his subjects from furnishing arms, or warlike stores, to the Indians in general situated on the frontiers of the Spanish possessions.

[1] For the French text and an English translation of the convention between Great Britain and Spain of July 14, 1786, see British and Foreign State Papers, I, pt. 1, 654–63.

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Does this contain any assertion on the part of Great Britain that the Mosquitos were a nation independent of Spain, or any acknowledgment by Spain to that effect? On the contrary, the stipulation required in behalf of that tribe unequivocally implies a confession of a right of dominion in Spain over them, as well as a fear that this right might be exerted for their extermination or unconditional subjugation, for which it is quite probable Spain may have thought she had just and ample cause. Great Britain may have been actuated by motives of policy and gratitude in her intercession, but those motives were not allowed by Spain to derogate from her rights of sovereignty. British interference in this instance to screen the Mosquitos from that chastisement which Spain may have deemed they deserved for what she probably considered their treachery towards her, affords no argument to uphold the sovereignty of the Mosquitos or to weaken the title of Spain, or of her representative, to jurisdiction over their territory.

But it is said that if upon its emancipation from Spain, the Republic of Central America succeeded to all the territorial rights of Spain within the limits of that Republic, they received them coupled with the obligations with which they were encumbered, and that in acknowledging the independence of Central America, other nations did not intend to forfeit any rights which those obligations may have given them. The truth of this abstract proposition may be acknowledged without impairing the claim of that Republic to dominion throughout the ancient Vice Royalty of Guatemala. This claim was asserted in the Constitution of the Confederacy of Central America, and if any nation which acknowledged that confederacy possessed any right, or had any interest as a principal or as an ally in questioning the extent of territorial jurisdiction which it claimed, a reservation in its favor should have been made at the time of that acknowledgment. We are not aware that Great Britain made any other reservation or clogged with any other condition her acknowledgment, than that the privileges stipulated in favor of her subjects by her treaties with Spain should be continued. The lines within which these privileges were to be enjoyed do not embrace the port and river of San Juan, or impinge upon any part of the territory of Nicaragua. It is believed that nothing has ever been done or attempted by the Central American States in violation of this pledge. An effort, however, is made to silence the complaints of Nicaragua by alleging that even if Spain or the Central American Confederacy had rights in the Mosquito territory, those rights have not devolved upon Nicaragua, any more than upon Costa Rica or Honduras. It is to be deplored that the dismemberment of that Confederacy, by giving rise to disputes about limits among the States of which it was composed, affords some plausibility to this allegation. It is not, however, essential for the purposes of this inquiry, that the respective territorial limits of those States should be ascertained. Whatever they may have been whilst they were provinces of Spain, or as States under the Confederation, or whatever they may ultimately become by arrangements among themselves, the rights of the Mosquitos cannot be affected or augmented by their indeterminate condition. Those rights are the same as they were under Spain and the Confederacy, and will so remain until they shall receive the increment claimed for them, by the voluntary surrender, jointly or severally, of the States by which it is now lawfully held.

Is Great Britain, however, eager or willing that the question of her alleged protectorship should be tried at the bar of public opinion? Does she believe that she can obtain credit for having undertaken it from a conviction that the Mosquitos were competent to discharge the duties of sovereignty, or is she disposed to hazard the notoriety of the fact, that the visor of royalty which she would fain place upon the pseudo-monarch of that region is too transparent to conceal the features of the real sovereign? Is she free from apprehension that, by persevering in her course, she will make monarchy, as a form of government, ridiculous, and, indeed, cast reproach upon the very name of independent government, which certainly implies that its agents are adequate to the purposes for which such governments are instituted, unaided by the counsels or the power of a third party?

Can Great Britain imagine that the commercial nations of the world will tacitly allow her by means so insidious to obtain substantial and exclusive control over the right of way to the Pacific by the port of San Juan and the river of that name, or to wrest the sovereignty over that region from the rightful proprietor?

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In such pretensions we trust that the United States at least will never acquiesce. Their objections, however, will not spring from any claims of sovereignty or desire of exclusiveness on their part, though they have paramount interests, present and prospective, in that channel of intercourse between the two oceans. They desire that it should be perfectly untrameled, or subject to such limitations only as the rightful owners of the land may impose for the completion and security of the enterprize. We ardently hope that Great Britain will take no step which will render it difficult for her to concur with us in the justice and expediency of this policy, and that she will recede from so much of her past course as may conflict with it. The President believes that she may do this without the slightest sacrifice of dignity or honor, and even without the least infringement of any obligations which she may conceive herself to have incurred towards the Mosquito Indians. The United States would view with no less concern than herself the practice of any harshness or inhumanity towards that people. They believe, however, that the great highway for the commerce of the maritime States of the world, if destined to pass through the region claimed for the Mosquitos, may, with the strictest regard to the dictates of philanthropy towards them, be kept free from obstruction by their pretensions, direct or indirect. If the British Ministry shall concur in these opinions, they may expect from us some pledge that we will act up to them. The President is willing that this should be given in any form which the Constitution of this Government will sanction. You may suggest, for instance, that the United States and Great Britain should enter into a treaty guarantying the independence of Nicaragua, Honduras, and Costa Rica, which treaty may also guaranty to British subjects the privileges acquired in those States by the treaties between Great Britain and Spain: provided that the limit of those States, on the east, be acknowledged to be the Carribean sea. The treaty might also guaranty to the Mosquito Indians the right to pursue their usual occupations within definite limits, ample for such a purpose, with a condition that if any nation, corporation, or company shall have acquired, or shall acquire, the privilege of constructing a communication between the Atlantic and Pacific oceans by means of a canal, and if such communication shall necessarily pass through the lands assigned to the Mosquitos, a reasonable compensation shall be secured to them, which should be paid by Nicaragua, for the extinction of their title to as much of that territory as may be necessary for the object in view. We have within a few days past received from Nicaragua a treaty negotiated by Mr. Squier with the Nicaraguan Government. A copy of so much of this treaty as relates to the proposed canal accompanies this despatch. Herewith you will also receive a copy of the canal contract or charter referred to in that treaty. You will perceive that the right to make the canal is conferred upon American citizens. We invite Great Britain to all the benefits of the canal they are to construct, and to join us in protecting them. We invoke this protection for the interests of humanity, as well as for the interests of Great Britain herself, no less deeply concerned in procuring the benefits of the proposed canal than ourselves. For this purpose, in conversation, exhibit to Lord Palmerston a copy of the paper marked A., which you will see is a projet of a treaty similar to ours with Nicaragua, on the subject of the canal. It would secure to Great Britain every benefit derivable from the canal and from Nicaragua which we have attempted to secure by our treaty with her. Say to him that we are willing and anxious that Great Britain should enter into such a treaty with Nicaragua; that we have no doubt Nicaragua will gladly avail herself of the offer of Great Britain to make such a treaty with her; and that our good offices, if desired, will not be wanting to induce Nicaragua to adopt it. Place the whole negotiation on the broad basis of a great highway for the benefit of mankind, to be dedicated, especially by Great Britain and the United States, to the equal benefit and advantage of all the nations of the world that will join us in entering into these proposed treaty stipulations with the State of Nicaragua. From the accompanying copy of a despatch[1] from Mr. Rives, of the 25th ultimo, you will see that Lord Palmerston is inclined to favor some such proposition. Tell him that since Mr. Rives conversed with him, we have received from E. George Squier, our Chargé d'Affaires at Guatemala, a treaty negotiated by him in pursuance of instructions

[1] Cited and printed above.

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from this Government, of the same import which we now desire Great Britain to form with that State. We understand from the conversation of Lord Palmerston with Mr. Rives that Great Britain disavows any intention to colonize any part of Nicaragua or Costa Rica, and that a written assurance to that effect from Lord Palmerston to you would be highly gratifying to the Government and people of this country, and eminently tend to strengthen and perpetuate the bonds of friendship now so happily subsisting between the two greatest commercial nations of the world. Say to him that our view of the chief mission of these two great nations, is to cultivate the arts and peaceful pursuits of commerce, and to increase the happiness of each other and of all mankind. Should he object that American citizens are to construct the canal, then represent to him this was a circumstance beyond the control of either his or our Government, as Nicaragua had the unquestionable right to contract with whom she pleased; that our desire to protect these citizens does not spring from any petty jealousy of other nations, though we are free to confess that if the work should be constructed by American enterprize, under the protection of all nations, we shall be proud of the achievement. The ready reflection will occur to your own mind that if any nation should keep the key of this communication for the benefit of all, ours, as being most deeply interested in it, is entitled to that custody. But we freely abandon, by inviting them to make the same treaty, all desire to obtain advantage over others who may be interested in that passage. If Great Britain desires any further guarantees of our good faith than these assurances, say to his Lordship that we will gladly enter into a treaty stipulation with Her Majesty's Government, binding both nations never to colonize, annex, settle, or fortify any part of the ancient territory of Guatemala, embracing Nicaragua, Costa Rica, Honduras, and indeed the whole Mosquito coast. That such a treaty would be highly gratifying to other nations of the world, inclined to look with jealousy upon any thing however slight which may indicate an intention on the part of either of us to maintain an exclusive position at any point on the isthmus, and especially any one within striking distance of the proposed canal.

If, however, the British Government shall reject these overtures on our part, and shall refuse to coöperate with us in the generous and philanthropic scheme of rendering the interoceanic communication by the way of the port and river San Juan free to all nations upon the same terms, we shall deem ourselves justified in protecting our interests independently of her aid and despite her opposition or hostility. With a view to this alternative, we have a treaty [1] with the State of Nicaragua, a copy of which has been sent to you, and the stipulations of which you should unreservedly impart to Lord Palmerston. You will inform him, however, that this treaty was concluded without a power or instructions from this Government; that the President had no knowledge of its existence, or of the intention to form it, until it was presented to him by Mr. Hise, our late Chargé d'Affaires to Guatemala about the first of September last; and that consequently we are not bound to ratify it, and will take no step for that purpose if we can, by arrangements with the British Government, place our interests upon a just and satisfactory foundation. But if our efforts for this end should be abortive, the President will not hesitate to submit this or some other treaty which may be concluded by the present Chargé d'Affaires to Guatemala to the Senate of the United States for their advice and consent with a view to its ratification; and if that enlightened body should approve it, he also will give it his hearty sanction, and will exert all his constitutional power to execute its provisions in good faith, a determination in which he may confidently count upon the good will of the people of the United States.

Should Lord Palmerston accept our proposition, the canal opening the communication between the Pacific and the Caribbean sea will be accomplished if it be practicable. Of its practicability he can doubtless give you much information; and you will endeavor to procure and transmit to this Department all the intelligence connected with that subject which you can obtain in England. No scientific exploration of the route has yet been made under the direction of this Government; but all the information which we possess leads us to believe that by the aid of the San Juan river and the lakes Nicaragua and Managua (or

[1] The Hise-Selva Convention of June 21, 1849.

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Leon,) an interoceanic ship communication may be obtained, which will admit us to our possessions on the Pacific, with the trade and the treasures of that mighty ocean saving a dangerous navigation around the Cape of more than twelve thousand miles. Without some such ship navigation, it may be difficult, at some future period, to maintain our government over California and Oregon.

If there be any other practicable ship canal route across the isthmus which connects North and South America, we are not aware of it. The British Government seems for a long time to have entertained the opinion that this will furnish the most eligible, if not the only practicable canal route between the two oceans. It would be difficult, on any other supposition, to account for the pertinacity with which Great Britain has again and again renewed her pretensions to this territory, as the ally and protector of the Mosquito King. Early in the year 1848, and about the time we acquired the title to California by the treaty of Guadeloupe Hidalgo, she renewed her ancient pretensions to the San Juan river, fitted out a military expedition against the Nicaraguans, drove them from the town of San Juan de Nicaragua, at the mouth of the river, and concluded an agreement [1] with them, in the Island of Cuba, in the Lake of Nicaragua, by which she compelled them to abandon the ancient town of San Juan, the name of which was Anglicized to Greytown. It is to be observed, however, that by those articles of agreement the Nicaraguans did not cede to her any portion of their territory, or acknowledge her title or that of the Mosquito King to any part of it. A copy of those articles of agreement accompanies this despatch. You will find it in a document published by the British Parliament which I exhibited to you at our last interview before you departed for England. You will observe that while the third article of this agreement declares that if Nicaragua shall interrupt or disturb the British possession as the ally of Mosquito, at the mouth of the river San Juan, it shall be a declaration of hostilities against Great Britain, the last article expressly reserves to Nicaragua the right of remonstrance against this usurpation and of negotiation to defeat it. We consider Nicaragua at perfect liberty to enter into a treaty with us for her protection, and that while England shall continue to represent herself as the ally and protector of the Mosquito King, a savage who had never any shadow of title against Spain, Central America, or Nicaragua, except that which every Indian tribe possesses in the country of a discoverer, liable to extinguishment or preëmption by the discoverer, we are at liberty to countervail this attempt on the part of Great Britain to gain an exclusive right or monopoly of the navigation of the San Juan river by accepting the Nicaraguan title. But we do not desire to be driven to this extremity. We do not court a collision with Great Britain. We are sensible that the canal ought to be open to the navigation of the world, or at least to that of all nations who will enter into treaty stipulations to guarantee the neutrality of this part of Nicaragua and protection to the capitalists who engage in and perfect the canal. Say therefore with perfect frankness to Lord Palmerston, that while we are willing and anxious that the canal communication should be open between the two oceans, we desire no exclusive right to that navigation, and will not seek to obtain it, unless we are driven to do so in self-defence; that while we invite Great Britain to join with us in these guarantees, we hold the neutrality of Costa Rica and the whole country on both sides of the projected canal to be highly important; that while we are willing to forbear the exclusive occupation of the canal, and invite all other nations to participate with us on equal terms in the enjoyment of it, no other great maritime power should occupy the territory on either side of the canal. If we were to occupy it, Great Britain would complain that, in the event of a war, we, by virtue of our exclusive possession, might overawe or obstruct the commerce of a hostile power. For the same reason, no other authority except that of the small States bordering on the canal should be permitted to be exercised over the adjoining territory. It is said that Costa Rica has lately set up a claim to the south bank of the San Juan river, if not to a part of the river itself, and that Great Britain may abet her pretensions if she has not already engaged to protect them, or obtained a cession of a part of the Costa Rica territory, or of some exclusive privileges in a projected communication between the two oceans by the way of the San Juan and Sarapiqui rivers, the

[1] Of March 7, 1848, cited previously.

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latter being a tributary of the San Juan. On this subject you will interrogate Lord Palmerston, and ascertain the purposes of the British Government in regard to Costa Rica as well as Nicaragua. Say to Lord Palmerston that the President considers that the interests of England ought to be identical with ours.

In the instructions to our present Chargé d'Affaires to Guatemala and to your predecessor on this subject, copies of which will be found in the archives of the Legation, the views of the President are so fully set forth that I forbear to dwell longer upon them at this time. The President still entertains the same views, and, should England oppose them, he will learn with deep regret of her refusal to coöperate with us for the protection of an enterprize which we think would be equally honorable and productive of incalculable benefits to both nations.

The delay of your predecessor has made it absolutely necessary that you should speedily bring this negotiation to a close. Lose no time therefore in ascertaining the views of the British Ministry. It is most desirable that the two Governments should understand each other before the approaching session of Congress, and that the President should be able to state the views of Great Britain on the whole subject to Congress, at an early period of the next session. Should Lord Palmerston refuse all our propositions, enter the protest which Mr. Bancroft was instructed to present, and immediately advise me of the fact. But should the British Government agree with us, as judging from the interview of Mr. Rives with Lord Palmerston I hope it will, then invite the advice and concurrence of that Government in such a plan as may seem best adapted to attain the ends we have in view. If you find his Lordship willing to coöperate with us, but still tenacious about the protection of the Mosquito Indians, say to him that we cannot doubt that Nicaragua could, in perfect accordance with her claim under the Spanish title, and would willingly secure to those Indians a proper annuity, for the purpose of extinguishing their title; that, according to our information in regard to the number of those Indians in Nicaragua, it does not exceed one thousand; and we learn that they are annually decreasing. If this information be correct, we cannot suppose there will be much difficulty in making an arrangement with Nicaragua which will be perfectly satisfactory, not only to Great Britain, but to her ally. Converse with Lord Palmerston on the subject of the boundaries of Nicaragua and Costa Rica. General Herran could not give me the information which I expected on this subject, but I have not been able to find any authentic map of Guatemala, or Central America, or Nicaragua, which does not extend the Nicaraguan territory at least as far north as Bluefields river. It is highly important that we should understand Lord Palmerston on this subject of boundaries. Also endeavor to induce him to withdraw all pretensions to the whole Mosquito coast. The British should occupy no position within striking distance of the canal in time of war; and you will see by the map that they should not retain any settlement on the Isthmus, though we may not object to their right to cut woods in that part of the coast (north of Nicaragua) to which the Spanish treaties have given them this privilege.

I shall await the result of your negotiation with no little anxiety. Bring it to a speedy close, one way or the other. We are ready for either alternative. If we must have a collision with Great Britain about this matter, the sooner we understand it the better for us. The President is firm in his purpose, and will never consent that Great Britain shall under any pretext enjoy any exclusive possession within the territory of Nicaragua. If we adopt the treaty negotiated by Mr. Hise, and Great Britain should persevere in her assertion of the Mosquito title, I know not how we can avoid a collision consistently with our national honor. If, on the other hand, Great Britain should, as the President sincerely hopes she will, meet our proposition in the spirit in which it is made, the two greatest commercial nations of the world, instead of contending in hostility with each other, will engage in the accomplishment of an object which may redound more to the true glory of each of them than the most successful war in which either could engage.

With that instruction of October 20 was sent this private letter of Clayton to Lawrence dated October 21, 1849 (7 Clayton Papers, 1205):

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You will receive with this a despatch on the subject of Nicaragua.

If you can procure from England a letter from Lord P. disavowing all intention to colonise or occupy any part of Nicaragua or Costa Rica and agreeing to enter into such a treaty with Nicaragua as ours made by Squier (marked A.) it will save us from a collision with her.

If you could also procure from him a letter disavowing all intention to colonize or occupy *any part of the Mosquito* coast that would be still better.

If you could procure from him an agreement to guarrantee with us the independence & neutrality of Nicaragua, Costa Rica, Honduras & the whole British Mosquito coast, that would be better than either of the former.

If England refuses all these offers we shall probably be driven to take Mr Hises treaty & then a collision may be inevitable.

The receipt by Lawrence of the foregoing instruction of October 20 and letter of October 21 was shortly followed by a conversation[1] (November 8) had with Palmerston and by this note to him from Lawrence of the same date (D.S., 60 Despatches, Great Britain, No. 10, November 9, 1849, enclosure):

As I told you in our conversation this morning, I have been instructed by the President to inquire whether the British Government intends to occupy or colonise Nicaragua, Costa Rica, the Mosquito Coast so-called, or any part of Central America. I have also been instructed to inquire whether the British Government will unite with the United States in guaranteeing the neutrality of a Ship Canal, railway, or other communication, to be open to the world, and common to all nations. May I beg the favor of an answer to these inquiries, and to express the wish that I may receive it before two o'clock tomorrow, so as to send it by this week's packet.

I am aware that Nicaragua is in dispute with Costa Rica on the one hand about her boundary, and with Mosquito on the other about their sovereignty. I do not propose to enter on these questions. I only desire to know the views of Her Majesty's Government on the questions I have proposed. At the same time I cannot but think that Great Britain and The United States can heal these breaches by kind offices, and that the Indians can be provided for in a manner satisfactory to Nicaragua and Great Britain, and far better for them than the equivocal position they now occupy.

I need not assure Your Lordship that the United States have no ulterior purposes in view. They frankly disclaim all intention of obtaining territory in Central America: and I have no doubt would be willing to mutually agree with Great Britain neither to settle, annex, colonise, or fortify that Country.

Palmerston responded in two notes of November 13; one of these dealt only with the Squier-Zepeda Treaty of September 3, 1849 (*ibid.*, No. 11, November 14, 1849, enclosure; printed in Blue Book, 1856, 8); the wording of the other note of Palmerston of November 13 (which follows; also enclosed with the despatch last cited) was of influence in the drafting of the Clayton-Bulwer Treaty; cooperation with the United States toward the construction of a canal was promised; Great Britain was willing to enter into a mutual agreement "neither to settle, annex, colonise, or fortify" Central America; but on the Mosquito question Palmerston was unyielding; the "State" of Mosquito was mentioned; and for the purposes of a canal the "consent of Mosquito" to the use of Greytown as a terminus would be obtained:

[1] Reported in D.S., 60 Despatches, Great Britain, No. 10, November 9, 1849; printed in Senate Executive Document No. 27, 32d Congress, 2d session, serial 660, pp. 43–44. Despatches Nos. 10 and 11 from Lawrence, with their enclosures, are in Manning, *op. cit.*, VII, 319–24.

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I have received your letter of the 8th Instant, written in accordance with what passed in our conversation in the morning of that day, and I hasten to reply to your enquiries

With regard to the first part of your Inquiry I beg to say, that Her Majesty's Government do not intend to occupy or colonise Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America.

With regard to Mosquito, however, a close political connexion has existed between the crown of Great Britain and the State and Territory of Mosquito for a period of about two Centuries: but the British Government does not claim dominion in Mosquito.

With regard to the second part of Your Enquiry, I beg to say that Her Majesty's Government will feel great pleasure in combining and cooperating with the Gov't of the United States for the purpose of assisting the operations of any Company which may be formed with a view to establish a commercial communication by Canal or Railway, between the Atlantic and Pacific, across the Isthmus which divides the Northern from the Southern portion of the American Continent: both by obtaining local security for the works while in progress, and when completed, and in use: and by placing such a communication, through the means of political arrangements, beyond the reach of molestation, disturbance or obstruction, by reason of international disputes, which may at any time unfortunately arise: upon the condition, moreover, that such communication should at all times be open and accessible for the Commerce of all Nations, upon equal terms for all. Her Majesty's Government would feel that the Union of two great Powers for the accomplishment of an object of such general utility, and tending so much to assist the diffusion of civilisation, and to strengthen the Foundations of International Peace, would be as honorable to the Powers concerned in such an arrangement, as the result would be advantageous to the Commercial Interests of the World at Large. With regard to the Port of Grey Town at the mouth of the river St John, Her Majesty's Government would fully undertake to obtain the consent of Mosquito to such arrangements as would render that Port entirely applicable, and on the principles above mentioned, to the purposes of such a sea to sea communication.

You advert in your Letter to the differences which have arisen between the Republics of Nicaragua and Costa Rica in regard to boundaries, and to some other matters, and you suggest that the joint influence of Great Britain and of the United States should be Employed to heal by their good offices the breaches which have interrupted the Friendly Relations of those two contiguous States. Her Majesty's Government would upon Every account be glad to join with the United States in effecting such a reconciliation; and the more so because the cordial cooperation of both those Republics would be Essential for the satisfactory completion of the contemplated undertaking.

I have only further to say that Her Majesty's Government have received with great satisfaction your assurance that the United States have no ulterior purposes in view in regard to these matters: that they frankly disclaim all intention of obtaining Territory in Central America: and that you have no doubt that they would be willing to enter into a mutual agreement with Great Britain neither to settle, annex, colonise, or fortify that Country: and I can with equal frankness assure you, that into such a mutual agreement Her Majesty's Government would be equally ready to enter.

One expression in the foregoing note deserves special attention; "dominion" in Mosquito was disclaimed, while the protectorate over the "State" of Mosquito was maintained; thus the word "dominion" was used by Palmerston in the sense of "sovereign authority" or "sovereignty" and not in the sense of "control" (see New English Dictionary). One of the covenants of Article 1 of the Clayton-Bulwer Treaty is never to "assume, or exercise any dominion over . . . the Mosquito Coast".

There were a few further exchanges at London during the remaining weeks of 1849, none of which advanced the negotiation (see Palmer-

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ston to Lawrence, November 19, 1849, on the subject of joint surveys, and the latter to the former, November 22, 1849, with enclosures, November 22 and December 14, 1849, in Blue Book, 1856, 8–28). An additional instruction to Lawrence was written (December 10) when the texts of the notes of November 13 had been received at Washington; Clayton found Palmerston's principal communication of that date "in many respects satisfactory" but not insofar as it showed that Great Britain still regarded "the Mosquitos as a sovereign State"; Lawrence was directed to press the relinquishment by the British Government of "any control, direct or indirect, which it may have over the port of Greytown" (D.S., 16 Instructions, Great Britain, 73–74; printed in Senate Executive Document No. 27, 32d Congress, 2d session, serial 660, pp. 51–52); but when that instruction reached London (December 25), Lawrence was "too ill to attend to business" (D.S., 60 Despatches, Great Britain, No. 20, December 28, 1849); and other circumstances combined to effect the transfer of the negotiation to Washington (the papers cited in this paragraph are in Manning, *op. cit.*, VII, Documents 2881, 2882, 2883, 2887, 2699, and 2888).[1]

Tigre Island

On September 28, 1849, Squier had signed at León, Nicaragua, with the Plenipotentiary of Honduras, José Guerrero, a treaty of thirty-seven articles; that treaty was in large part based on the treaty of 1825 with the Central American Federation (Document 50); but it included (Article 35) provisions regarding transit across Honduras and terms of concessions on Tigre Island or elsewhere in the Gulf of Fonseca for the canal company of the Squier-Zepeda Treaty, for an American line of steamers, and for a naval base of the United States (D.S., Unperfected W1); and with that treaty, on the same date, there was signed a protocol of three articles for the cession to the United States of Tigre Island,[2] in the Gulf of Fonseca, "for the time pending the ratification or rejection of the General Treaty", but not exceeding eighteen months (the treaty and protocol are printed in Manning, *op. cit.*, III, 393–401). On the date of the treaty and protocol, notice of the cession was given by Squier to the other diplomatic agents resident in Central America; and a decree to the same effect as the protocol was signed by the President of Honduras on the following October 9 (see Blue Book, 1856, 31–32, for the protocol and decree). On October 16, a British naval force took possession of Tigre Island pursuant to the direction of Frederick Chatfield, British Consul General and Chargé d'Affaires at Guatemala; "proprietary rights" were asserted over other islands in the Gulf of Fonseca belonging to El Salvador; and the port of Trujillo, on the Caribbean coast of

[1] Not until receipt of Clayton's private note of March 31, 1850 (8 Clayton Papers, 1575), did Lawrence learn that "these negotiations are entirely transferred to Washington" (D.S., 60 Despatches, Great Britain, No. 44, April 19, 1850, a despatch of 128 pages on the Mosquito question, with a map; printed in Senate Executive Document No. 27, 32d Congress, 2d session, serial 660, pp. 73–98; also, without the map, in Manning, *op. cit.*, VII, 362–89).

[2] Tigre Island includes the important city and port of Amapala.

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Honduras, was subjected to "temporary occupation" (see *ibid.*, 30–31, 33). Between Squier and Chatfield there was some vigorous correspondence (see *ibid.*, 33–34; also Williams, *op. cit.*, 60–66, and Senate Executive Document No. 43, 31st Congress, 2d session, serial 591; the writings of Squier for this period are abundantly assembled in Manning, *op. cit.*, III, *passim* from p. 393; and the instruction to Squier cited in the next paragraph is in *ibid.*, 55–56).

News of the treaty with Honduras signed by Squier on September 28 and of the proposed cession of Tigre Island to the United States reached the Department of State on November 12, 1849 (see D.S., 15 Instructions, American States, 100–3, November 20, 1849, mildly disapproving the agreement with Honduras; and 2 Despatches, Guatemala, Nos. 5, 6, and 7, October 10 and 12, 1849); word of the British occupation of Tigre Island reached Washington from Squier on December 27 (*ibid.*, the second No. 7, of October 25, 1849), and at almost the same time (December 24) Sir Henry Lytton Bulwer presented his credentials to President Taylor as Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty. Clayton, writing to Lawrence on December 29, 1849, informed him of the occupation and of the treaty with Honduras which had been signed by Squier (without specific mention of the protocol of cession); the final paragraphs of that instruction read thus (D.S., 16 Instructions, Great Britain, 79–83; printed in full in House Document No. 75, pp. 313–15; also in Manning, *op. cit.*, VII, 56–58).

> That part of the treaty with Honduras relating to the canal negotiated by Mr. Squier, of which I herewith send you a copy, was made by him without instructions from this Department; but if the British aggression upon Honduras be not promptly disavowed, that treaty will be speedily submitted to the Senate for ratification, without awaiting further negotiation.
>
> It is now palpable that our Chargé d'Affaires at Guatemala was right in his conjectures as to the intention of the British authorities in Guatemala to seize upon and assert British jurisdiction over other parts of Central America. We have not desired to annex or colonize any part of that country, but we shall not be restrained by any act of the British Government from treating with Honduras or Nicaragua, and from the assertion and maintenance of any rights we may lawfully acquire by such treaties. We have frankly avowed to Great Britain, and she must have fully understood it, that our object is to protect a canal across the isthmus. She is fully aware that the lakes of Nicaragua and Leon furnish the most eligible route and means for feeding such a canal; and whether that canal should terminate in the Pacific, at Realejo, within the confines of Nicaragua, or at the Gulf of Fonseca, within those of Honduras, we mean to protect it with the consent of the States through which it may pass.
>
> Sir Henry L. Bulwer has been most cordially received by the President, but I regret to learn from him that he has no instructions from Lord Palmerston in reference to this subject. As he has no authority to treat with us, we must submit to the delay of communicating with the British Government across the Atlantic. I await your despatches by the next steamer, hoping you have brought the negotiation to a close.

The views of Clayton at the time are also expressed in this private and confidential letter (headed "Draft") to Lawrence, of December 26, which seems to have been written when the news of the occupation of Tigre Island was first received (7 Clayton Papers, 1375–76):

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The conduct of the British Consul General in Guatemala in seizing upon Tigre island and extending British jurisdiction over it and his intrigues in Costa Rica have excited the disgust of the American people and if the outrages perpetrated under his orders be not disavowed without the least delay by Lord Palmerston there will be great danger of an immediate collision between the two Governments. When you address your note to Lord P. demanding the disavowal he may very probably demand of you the disavowal of the conduct of Mr Squier about the Honduras treaty, which I have no doubt induced Chatfield to seize Tigre island. Your reply to him in that event will be, that it was no part of Mr Squier's object in making that treaty to annex or colonize any part of Honduras but that in the belief entertained by him (a civil engineer) that the gulf of Fonseca would be a favorable point for the termination of the canal he thought it proper to treat with Honduras for such a canal and for a dépôt on Tigre island. You will also then say to Lord Palmerston that we do not recognize the right of the British Government to interfere to prevent any treaty we may choose to make with Honduras. In this case Squier made the treaty and gave notice to Chatfield, whereupon Chatfield forthwith seized the very island in which we had acquired an interest by the treaty. This was evidently done purposely to bring his Government into collision with us. The British Government must make the first explanations to us and disavow all his acts extending British jurisdiction and they must agree to withdraw from all occupation of Tigre island before we proceed any further. If they do not I shall submit the Honduras treaty to the Senate. If you could procure an interview with Lord Palmerston you might tell him of the imminent danger now threatening the peace of the two countries. We shall not submit to the seizure of territory under the pretext of paying a debt. Were that a justifiable ground for such a violent procedure the United States might on the same ground proceed to seize the port of Lisbon for the debts of Portugal and the South American States of Venezuela, Buenos Ayres, Chili and Peru. Nations must not help themselves in this way. It might do for India but it will not do for America and in this case the aggression is not only upon Honduras but upon us who had acquired an inchoate title, of which they had notice, to a part of the very island which they have evidently seized for the purpose of coming into contact with us.

I hope you have brought the negotiations about the Mosquito title to a close. The Steamer is not yet in, and I await the receipt of your despatches with great anxiety. If Lord P. has not acceded to our proposition or something substantially like it I shall present Squiers treaty to the Senate immediately in spite of the King of Poyais and Emperor of the Mosquitoes and all his allies. From the conversation of Sir Henry Bulwer I conjecture that Lord P. will refuse to give up the mouth of the San Juan to Nicaragua and therefore will not concur in Squier's treaty. We shall never agree to recognize the Mosquito title. We cannot honorably repudiate the Nicaragua title after having treated with her and we will not do it. If her own interests and the interests of humanity cannot induce England to abandon the protectorate of Prince George Frederick Augustus we will keep faith with Nicaragua. We have no objection to the confirmation of the titles of all the British settlers in Nicaragua. Nicaragua will agree to this.

Write a note to Lord P. about Costa Rica, if you have not already done it. Inquire of him if there be any foundation for the rumors that Costa Rica has put herself under British protection or mortgaged any part of her territory to pay British debt. The impatience of Congress and of the country requires prompt action on our part.

The Project of February 3, 1850

Clayton had been informed by Bulwer that the latter had "no instructions from Lord Palmerston in reference to this subject" (instruction to Lawrence of December 29, 1849, quoted above); in the technical sense, this was doubtless so; but Bulwer was so fully acquainted with the views of Palmerston that he was able to write to Clayton some weeks later (with no relevant instructions in the meantime) of "the letter and spirit of the instructions I have received"

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(8 Clayton Papers, 1509–11, February 17, 1850); by January 1, 1850, Bulwer had given to Clayton a draft of a convention; and Clayton was expressing his anxiety to Bulwer, to whom he wrote on that day (*ibid.*, 1423):

> Your draft of the proposed convention is herewith retd
> I recd to day a letter from Lawrence in wh. he speaks as if he had great hope of obtaining the consent of the Brit Cabinet to our propositions. But the delay is dangerous Chatfields proceedings have embarrassed me exceedingly. See the resolution of Mr. Savage in the Ho. of Reps. This forbodes evil. Can nothing be done to prevent the bad feeling wh must flow from a public discussion of Chatfield's acts & of the Mosquito title? Lawrence does not allude to Chatfield's conduct, I suppose because he had not heard of it on the 14 Ultº the date of his despatch. Appearances are gloomy & I am most anxious about the attitude of yr Govt. Cannot something be done promptly?
> I hear that France is ready to join in the treaty of guaranty with us & I have been censured for not proposing it to her. I have not as yet made any overture to France on the subject. My wish has been that England shd originate the measure with us. If she will not I must lay Mr Squier's treaty before the Senate.

In the archives of the Department of State there is almost no record at all of the negotiations from this time up to the signing of the treaty on April 19; but the comprehensive despatches of Bulwer throw much light on the proceedings; and there was extensive "private and confidential" correspondence, as the Clayton Papers in the Library of Congress show; Bulwer wrote that among his troubles was "a private correspondence of ubiquitous extent with Mr Clayton" (to Addington, June 9, 1850; F.O. 5 : 513); and one unofficial person who "acted a very conciliatory part throughout" and who "smoothed over a variety of difficulties with this Government, which I should have found it hard, without his assistance, to deal with", was Joseph L. White, of the Canal Company (*ibid.*, Bulwer to Palmerston, private, July 1, 1850).

The action taken in Honduras at Tigre Island and Trujillo by the British naval forces produced much excitement in Washington. Bulwer reported on the situation as he saw it and on the views of Clayton in the following interesting despatch of January 6, 1850, less than half of which is printed in Blue Book, 1856 (pp. 28–29; F.O. 5 : 511, No. 5):

> I inclose to Your Lordship the New York Tribune [1] which contains copies of a correspondence that has taken place between the Minister of Foreign Affairs of the State of Honduras and Mr Chatfield Her Majesty's Consul General at Guatemala relative to the temporary occupation, by Her Majesty's Forces commanded by Captain Dolloud of Her Majesty's Steam Vessel "Plumper" of the Port of Truxillo, and the seizure in Her Majesty's name of the Island of Tigre in the bay of Fonseca, which Island was taken possession of by the Commander of the "Gorgon" at the request and under the authority of Mr Chatfield.
> I need not observe to Your Lordship that much excitement was produced here by the announcement of this last event.
> The uniform policy of the Agents of the United States in Central America has of late been to create a sort of personal reputation for themselves, by obtaining from the weak Governments to which they have been accredited the grant of some exclusive right, advantage, or possession, in favour of their own Government, grounding their acts upon the assertion that they were thus meeting or counteracting the arbitrary, aggressive, and aggrandizing policy of Great Britain.

[1] Of December 27, 1849.

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Your Lordship is aware that acting in this spirit Mr Hise, not long since an Agent of this Country under a former administration, obtained by Treaty what was called the exclusive right of navigating a Canal to be constructed by an American Company from the Atlantic to the Pacific through the State of Nicaragua, but what was in fact, in its evident meaning and numerous Stipulations, a cession of the whole State of Nicaragua to this Republick, which, had Mr Hise's Treaty been accepted, would have been bound to claim as the Territory of Nicaragua a portion of that Country over which we have always maintained and recently asserted the dominion of the King of the Mosquitos.

Mr Hise was recalled, and the present President has considered his Treaty to be one that did not deserve his sanction. But Mr Squier, sent out by Mr Clayton to replace Mr Hise, has followed as closely as possible the conduct of his Predecessor. In publick speeches he has seemed to claim a sort of Protectorate for the United States over those South American Republicks amidst which his functions placed him; and having made a Treaty with Nicaragua, with respect to the Canal that had occupied Mr Hise's attention, less objectionable in form than that of Mr Hise, but throughout which may be traced an under current of the same feelings and pretensions, he furthermore entered into a Treaty with the State of Honduras, by which the Island of Tigre was ceded to the United States, a fact that without hesitation or reference to his own Government he immediately notified.

Mr Clayton has on various grounds manifested a desire to approve, with some modifications, of Mr Squier's first Treaty with the State of Nicaragua, but he has told me that he not only refused to sanction Mr Squier's second Treaty with the State of Honduras, but that he reprimanded Mr Squier with some severity for having made it, and ordered him for the future to confine himself closely within his Instructions.

In this state of things appears the communication that I herewith inclose, and they who have been long clamorous in announcing that England has ever had designs for conquest and aggrandizement in America, which it was the duty of the United States to forestall, deem that the opportunity is favourable for reasserting and justifying their former declarations.

Mr Hise in the meantime, taken up by his own Party, is active in spreading copies of his Convention and lauding its advantages, whilst the Friends of Mr. Squier, who happens like Mr Hise, to be of the Democratic Party having been selected on account of his supposed qualifications as an Engineer, which were thought useful with respect to the contemplated Canal, extol this Gentleman's sagacity, insist upon the cession which he obtained of the Island of Tigre, as prior to its seizure by Mr Chatfield, and endeavour to make it appear that the Agent of Great Britain by taking this Island, after the knowledge that it had been ceded to the United States by Honduras, has committed an Act of direct aggression not only against Honduras but against the United States.

I should now state that this Cabinet is not in the best condition for resisting popular clamour. The election of a Speaker in the Representative Assembly was carried against it, and though this was by a combination that may not always occur, it can count upon no solid majority in that Assembly, whilst in the Senate it is well known that there is a majority of the opposite Party. Moreover the administration does not contain any of the great leaders of the Whig Party, and consequently has not that Confidence in itself nor that Authority over others which would give it the energy necessary to stem any strong current of public opinion. Your Lordship will see in this account much that may at first sight seem fair cause for anxiety: I do not think however that there is at present any serious reason for alarm. It is necessary, upon the whole, with these People to act with equal firmness and moderation; to make it clear that we have not any sort of unjust or ambitious views ourselves, and also that we will not yield, on any consideration whatsoever to injustice or arrogance on the part of others.

I can affirm even on the short experience I have already had of this Country that it is not to be hastily inferred that those who clamour for war are really desirous to make it. Their views are merely party views extending only to party objects. They wish to harrass and embarrass those in power, and to acquire by a great display of national presumption and popular sentiment a preponderance in the next Presidential Elections; but though for this object they are willing

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to push matters to the verge of hostilities with any Foreign Power, they certainly do not actually mean to provoke them.

To show anything like apprehension at their violence would be to encourage it, and ere long to carry this Country, and its Government beyond the line at which peace could be preserved, by misleading both as to what that line really is.

On the other hand were the Conviction to pass into the mind of the more sober classes of this Community which is now merely on the lips of those who speak from Party motives or unfounded suspicions, and it were to be generally believed that Her Majesty's Government really had views of that aggressive and ambitious character which certain Orators and Papers in this Country give to us, there would then no doubt arise throughout the United States, a National sentiment of hostility and indignation against our Policy which neither explanations nor even concessions could easily appease.

I ought not to disguise from Your Lordship that if Mr Chatfield had, without any preceding provocation from Mr Squier, taken possession of the island of Tigre, and that it seemed probable that Her Majesty's Government meant to retain permanently under the Sovereignty of Her Majesty this possession, such an occurrence would have produced an impression upon the publick mind here which sooner or later would have led to disastrous consequences: but I am also inclined to think that this somewhat bold act of Mr Chatfield, coming after the indiscreet, hostile, and ambitious acts of his colleague, may, in spite of the temporary irritation it has caused, produce a salutary effect, and convince the American public that they must not carry matters with too high and overbearing a hand, unless they are willing to provoke other States into assuming a similar policy. The minds of people indeed seem to me ripened by this incident into a State where mutual conciliation may be practiced, and I have troubled Your Lordship at this length upon the matter because I am anxious that such an opportunity should not be lost. I have seized it for my own part in order to give Mr Clayton the most positive assurances that I am convinced that Her Majesty's Government has had no object in any Instructions it may have given to Mr Chatfield (of which Instructions I have however professed myself not to be officially informed) beyond the settlement of it's just claims on the State of Honduras, and that if these claims have at last been urged in somewhat a peremptory manner, the fault is mainly to be attributed to Mr Squier, who, instead of advising the Honduras Government to acquit them, has, as it would appear, been backing up this State in its resistance, and encouraging it to suppose that it would receive the aid of the Government he represented.

I stated to Mr Clayton my belief that it would be much more for the real Interests of the Citizens of the United States, as well as of the Citizens of Great Britain, if the Agents of these two Governments aided and assisted each other in their relations with the small Powers amongst whom they reside, instead of leading and encouraging them in their insolence and injustice towards stronger States, and that Great Britain and the United States having so lately explicitly declared that neither entertained any projects of selfish ambition over Central America, we might fairly and entirely unite in advancing the only interest which really concerns us in that part of the world, viz: the progress of Commerce and Civilization.

I found Mr Clayton well disposed to take up these views, and I think that if it should suit Your Lordship to explain the real nature of the transactions which have recently been taking place in Honduras, in a spirit and sense conformable with Your Lordship's recent declaration to Mr Lawrence, Mr Clayton would not only be satisfied with these explanations, but ready to join Your Lordship in giving such joint Instructions to the Agents of Great Britain and the United States in Central America as would greatly modify or entirely put an end to their separate action, and the constant difficulties therefrom arising.

At the same time Bulwer also put forward the suggestion, approved by Clayton, that similar instructions should be transmitted by the two Governments to their agents in Central America to the effect "that neither Great Britain nor the United States proposes to obtain for itself any peculiar or exclusive advantages, nor extend its dominion in that part of the world: and that, consequently, it will be the duty

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of such agents, instead of attempting to counteract projects which do not exist, by placing themselves at the head of rival parties, to lend each other mutual assistance in the transaction of the business with which their respective Governments may charge them" (Blue Book, 1856, 29, also of January 6). That proposal was approved by Palmerston; such instructions to British agents in Central America were framed (*ibid.*, 43–44) and communicated to Clayton (*ibid.*, 47–48, March 28; the original of this note, dated March 27, 1850, is not in the archives of the Department of State, but in 8 Clayton Papers, 1570–72); but no instruction of the agreed sense was sent to Squier until May 7, 1850, after the signature of the Clayton-Bulwer Treaty (D.S., 15 Instructions, American States, 104–8; Manning, *op. cit.*, III, 59–61); that instruction did not reach Squier until shortly before he left his post for the United States in the latter part of June (D.S., 2 Despatches, Guatemala, No. 34, June 25, 1850; Manning, *op. cit.*, III, 535–36); and Squier was in Washington by July 19 (*ibid.*, of that date).[1] The British instructions were not forwarded until those to Squier had been sent (see F.O. 5 : 512, No. 80, May 20, 1850).

Also on January 6, 1850, Bulwer transmitted to Palmerston two drafts of a convention. The "more general" of these, Bulwer wrote, "would be better" on some grounds, "but the New York company would be against it", and he did not think "that it would afford so prompt and easy a mode of settlement as the other project" (F.O. 5:511, unnumbered). That draft was in five articles with two supplementary articles. The other draft was with his despatch No. 12 (*ibid.;* printed in part, without the enclosure or reference thereto, in Blue Book, 1856, 29–30). With that despatch is a Foreign Office memorandum dated January 13, 1851, to the effect that the despatch "shews that the Proposal of a Treaty between Gt. Britain and the United States respecting the Nicaragua Communication originated with Sir H. Bulwer." Those papers were received in London on January 22. The text of despatch No. 12, with its enclosure, follows:

Since arriving in this country I have taken some pains to ascertain in what way the questions that have arisen between H.M. Gov[t] and that of the United States with respect to Nicaragua and the Kingdom of Mosquito, might be brought to a prompt and satisfactory conclusion. Your Lordship is aware that the main interest of the United States in this matter, has arisen from its newly acquired possessions in the Pacific, and the project of an American Company to form a water communication between the two oceans, passing through the lake of Nicaragua and the River San Juan, this Company having obtained from the State of Nicaragua the use of its lakes and territory for this purpose and the use also of the River San Juan to which Nicaragua lays claim. In this manner the Gov[t] of the United States became interested in the pretension of the Nicaraguans, and desirous to establish the fact that the River San Juan, ceded by the Nicaraguans to an American Company for an object of the utmost interest to America, should be placed at the disposal of the State making that concession. This

[1] On September 13, 1850, Squier was notified at New York that the President had decided to appoint a successor to him as Chargé d'Affaires (D.S., 15 Instructions, American States, 110), and he did not return to Central America in an official capacity. For some interesting letters of Squier to Clayton (1849–50), see Hispanic American Historical Review, I, 426–34.

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first interest in the claims of Nicaragua therefore, proceeds from a interest in the construction of the Canal to which I have been alluding. But it so happens that while it is very difficult, not to say impossible, for H.M. Govt to listen to those claims of Nicaragua, our decision with respect to which has been already openly taken, there is no difficulty I believe whatsoever in H.M. Govt assisting the United States Govt in its general views with respect to that water communication across Central America, which Great Britain must be almost as desirous as the United States to see established. Our great object therefore as it has appeared to me, is to displace the discussion from the claims of Nicaragua and Mosquito on which it is unlikely that the two Govts of Great Britain & the United States should agree, and bring it to the consideration of the Canal, on which it is almost certain that their views will be identical.

Having conversed with several persons of importance, & of different parties on this subject, and with Mr Clayton himself, I am disposed to think that the best means of doing this is by a convention between Gt Britain and the United States having for its object to facilitate the construction of the desired Passage between the Atlantic and the Pacific on such terms as without entering upon the question of the rival claims of Nicaragua and the Musquitos would confer upon American Commerce all it can desire to obtain in a manner corresponding with the dignity and honor of great Britain and the disinterestedness of Her protectorate over the Musquito territory. As it is desirable to have this question set at rest as soon as possible and much time is lost in communication to and fro between the two countries I have thought it best to give your Lds hip a definite idea of the sort of convention which I believe would satisfy here by sending you the rough and hasty sketch of such a project as I venture to recommend. Had my object been merely to suggest the best sort of convention which the two Govts could form I might have proposed that they should first agree to send conjointly Engineers to survey the various courses that have been pointed out for a passage between the two Oceans and that then the protection of the two Govts should be afforded in the manner proposed to the particular line thus selected. But I am obliged to say that this proposal of a survey would be received by many in this Country with distrust and considered as merely the means to get rid of the question by indefinite postponements. In this way the Company which has the present grant from the State of Nicaragua would doubtless represent it and this Company has considerable influence.

I regret very much that I cannot enter into so long an explanation of my reasons for bringing this mode of settling the question, which has been occupying the attention of the two Govts, before Your Lordship; nor of pointing out my motives for some of the provisions which the inclosed project contains; but I have barely time for the few preceding remarks.

[Enclosure]

The Undersigned representing the desire which their respective Governments entertain to see established by a free and prompt communication between the two great oceans of the Atlantic and Pacific by a water Passage across the Isthmus which divides the Northern from the Southern portions of the American Continent now and hereby agree in the name and on behalf of the said Governments, to further the great object in view, and to establish a lasting monument of the Friendship and Feelings which animate the kindred States of Great Britain and the United States, by a Convention containing the following Articles.

Art: 1. The Governments of Great Britain and the United States undertake to protect the Construction and to guarantee the neutrality when constructed of a Canal across the Isthmus of Central America by the River St Juan, the lakes of Nicaragua to the Port of Realejo, providing that the principles on which it is undertaken, and the Regulations for traffic wh are to be established thereupon meet with their approbation; and will moreover use whatever influence they respectively exercise with any States that possess any jurisdiction or Rights over that Territory wh this Canal may traverse, in order to induce such States to facilitate by every means in their Power its construction, and even to consent to the establishment of two Free Ports one at either end thereof.

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ART: 2. The Governments of G^t Brit: & the Un: St: hereby declare that neither the one nor the other will ever obtain for itself any exclusive Privileges upon, or exclusive controul over the said Canal, agreeing that neither will ever erect any Forts commanding the same, nor establish any colonies in the vicinity thereof, nor will G^t Brit: or the Un: St: take advantage of any intimacy or use any alliance or connexion that either may possess with any State, through, or by which, the said Canal may pass, for any purpose which can militate against the spirit of this Treaty, by acquiring directly or indirectly, for the Subjects, Citizens, or Commerce of the one, any rights or advantages to w^h the Subjects, Citizens, & Commerce of the other are not entitled.

ART: 3. The Brit: & Un: St: Gov^{ts}, having renounced hereby for each separately, & not being desirous to obtain for themselves conjointly any peculiar advantages by this Convention, but being on the contrary anxious to open thereby, common advantages to the whole world, agree not to accept from the Parties by whom the aforesaid Canal shall be constructed, any rights, or advantages w^h the said Parties shall not be willing to confer on all Nations, the Gov^{ts} of which shall enter into obligations similar to those here entered into by the Gov^{ts} of Great Britain and the Un: St:

ART: 4. If by any accident or misfortune the friendly Relations at present existing between Great Britain & the Un: St: should at any future time be unhappily interrupted, these two Gov^{ts} notwithstanding pledge themselves that with respect to the stipulations contained in this particular Treaty shall still remain in force, & that each Power will itself respect, & cause to be respected by others the peaceful transit of Goods & Passengers by that water communication w^h shall have been constructed under their Patronage & Protection.

ART 5. It is to be understood that nothing in this Treaty prevents Great Britain and the Un: St: from extending the protection they here grant to a particular line of water communication, to any other canal or Railway which may be established for a similar purpose: the two Gov^{ts} on the Contrary hereby manifesting their willingness to afford such protection, on the principles they now recognize, to any Canal or Railway which, under proper Regulations, may tend to facilitate communication between the Atlantic & the Pacific Oceans.

Within a month after Bulwer had formulated his views of policy, Clayton agreed with him on terms, which were embodied (February 3, 1850) in a signed project of convention containing a preamble and eight articles (text in Blue Book, 1856, 38–39; no example or copy of this project has been found in the archives of the Department of State). The project of February 3, 1850, was signed *ad referendum*, subject to the approval of both Governments by the following April 10, and this was formally stated in a signed paper [1] contemporaneous with the project; a copy of that paper, the text of which follows, was enclosed by Bulwer with his despatch No. 29, of the same date as the project, wherein he wrote that "Mr Clayton is most anxious to get an answer from Your Lordship earlier than the 10th of April, although he has at my solicitation fixed that day as the one up to which he will expect one" (F.O. 5 : 511; printed in Blue Book, 1856, 40):

The Undersigned deeming it of the highest importance to the friendly relations between their two Countries to fix the attention of their respective Governments upon the terms on which a great and solid basis of amity may be established between them, and finding it necessary that this should be done with the least possible delay, if any advantages are to be derived therefrom have drawn up and signed as a token of their own opinions, and for the immediate consideration of

[1] No example or copy of this paper has been found in the archives of the Department of State.

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their Governments, the project of a Convention in the full form and shape of a Convention which is this day transmitted by Mail to England. If this project be approved of by the Government of Her Britannick Majesty, and the Government of the United States on or before the 10th of April next (1850) it shall then forthwith be converted into a solemn treaty binding between the two States.

But if on the contrary it should not be fully approved of by either or both these Governments on or before the 10th of April 1850, it is then fully agreed understood and declared by the Undersigned that the said project is to be considered as altogether null and void; and that all that has passed relative thereto shall be held as if it had never taken place.

(Signed) J. M. CLAYTON.
H. L. BULWER.

Both branches of Congress, the House of Representatives on January 24 and the Senate by a more elaborate resolution of January 28, had requested papers (see the presidential messages of February 13, quoting the requests and declining to send the papers, in Richardson, V, 31–32). Clayton, it appears, informed Bulwer that his position was "very critical" and thought that either "some immediate settlement" must be reached or he would be required to "deliver up the whole subject to popular discussion and determination". In his despatch of transmittal, of the same date as the project, Bulwer gave this account of his action (F.O. 5 : 511, No. 28; printed nearly in full in Blue Book, 1856, 35–38):

Although I have long deemed it highly desireable that the excitement which has latterly existed here in regard to the protectorate exercised by Her Majesty's Government over the Kingdom of Mosquito, and the extent of territory belonging to that Kingdom should be dispelled, and all chance of any difference between the two Governments on such a subject be set at rest in such a manner as would redound to the interests and honour of them both, and that I myself have thought that after the full manner in which Your Lordship explained your views to me on the whole of this question, and the knowledge which I have recently acquired of the practical bearings of it in this Country, I could safely and profitably undertake it's settlement on my own responsibility, I have nevertheless been scrupulous as to doing so as long as the matter did not seem to require especial urgency and as long more particularly as I thought it was being or could be treated of by Your Lordship and Mr Lawrence in London.

I have therefore simply endeavoured hitherto to prepare the way for some suitable arrangement by such explanations as seemed to me adviseable and necessary, and awaited the result of Your Lordship's negociations.

The Papers relative to this affair are now however asked for by both the Senate and the Assembly of Representatives. They would include two Treaties entered into by the different Agents of this Government with the State of Nicaragua, one [1] which was little less than the cession of this State to the United States Government, and which was disavowed; and the other [2] which as it stands would recognize the claims of Nicaragua, and give especial privileges to American Citizens. Nor is this all. There would be amongst such Papers, whatever Communications have passed between Mr Buchanan or Mr Clayton with Messrs Hise and Chatfield and the state of Nicaragua; whatever instructions were given to Mr Lawrence, relative to this subject, on his departure to England, and also a letter [3] from President Taylor to the President of Nicaragua, acknowledging the justice of the Nicaraguan pretensions as against the King of Mosquito and ourselves, and involving in some degree the Government of this country in the disputes which have arisen between the Nicaraguan Republic and Great Britain.

[1] The Hise-Selva Convention.
[2] The Squier-Zepeda Treaty.
[3] Of May 3, 1849; printed in House Document No. 75, p. 132, and in Manning, *op. cit.*, III, 52.

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Were such papers laid before Congress, the discussions, which would take place, must, without any final arrangement of the whole matter being announced, lead to such angry discussions, and to the promulgation of such violent opinions on this side of the Atlantic, as would render any subsequent understanding between the two Governments, of excessive difficulty.

I should hardly have acted however in any formal manner on this consideration alone, but having heard of the very serious illness of Mr Lawrence, and been informed by Mr Clayton that if this Gentleman recover, he will not be able to transact public business for a considerable time, I deemed that I stood in one of those positions in which it is necessary for a public agent to take upon himself a certain degree of responsibility for the sake of the public service, and consequently when Mr Clayton after informing me of Mr Lawrence's severe indisposition, and explaining to me the very critical position in which he himself stood, added that he must either deliver up the whole subject to popular discussion and determination, or come to some immediate settlement upon it, I entered with him into a full consideration of the affair, and finally agreed to submit to Your Lordship's sanction the inclosed project of Convention.

In order to make clear the spirit and intention with which the said project is drawn up, I feel it necessary to enter, with Your Lordship, into some statement of my own views with respect to the questions out of which it arises; some statement of the causes which have raised these questions into importance, and some explanation of the nature of the solution which I have given to such questions.

It seemed, then, to me that Her Majesty's Government after asserting first by argument, and finally by force, the rights of the King of Mosquito over a particular territory, and driving therefrom the agents of the feeble Government of Nicaragua, could not at the demand of another power of greater strength and importance, restore under any consideration to the Nicaraguans that Territory from which they had already been ejected.

Nevertheless, I was aware that the course which Her Majesty's Government pursued in this case, was with a view to the general interests of commerce, as well as to those of justice; and that so far from wishing to make the protectorate which Her Majesty exercises over the Mosquito Territory, or that Territory itself, subservient to the views of any small, selfish, or grasping policy, it would be Your Lordship's desire to make both the one and the other useful, in the widest sense of the term, to the common advantage of mankind, and the universal purposes of Traffic and civilisation.

Such being my conviction and knowledge on the one side, I was equally certain, on the other, that the interests of the United States were only incidentally involved in the question between Nicaragua and the Mosquitos; and mainly referred to another subject which though connected with the disputes which have arisen as to the extent of the Nicaraguan Territory, admit of a separate adjustment.

The Construction of any rail or water communication across that portion of Central America which separates, by a comparatively small distance of land, the two Oceans of the Atlantic and Pacific, would always have been of great interest to the United States; but since the possession of California and Oregon, this interest has indefinitely increased, so that that which was once a question of convenience, is now almost a matter of necessity. Thus the various routes, by which a railway or canal could open a way between the two seas, have latterly been under the constant attention of this Government, and amongst the most feasible and important of the schemes indicated, has been one of a Canal from the port of Realejo, through the Lakes of Nicaragua, to the mouth of the River San Juan.

Now the State of Nicaragua made to an American Company, formed for the Construction of such a canal, the grant, accompanied by various favors and privileges, of all such portion of the Territory claimed by it, as the said Company required; and, in the two treaties to which I have already referred, namely those of Mr Hise and Mr Squier, the object of the American agents has evidently been to strengthen the contract which the abovementioned Company had made.

It was however impossible for the contemplated scheme to be executed under any grant from the State of Nicaragua, as long as the mouth of the San Juan River was in the hands of another people or Kingdom, protected by Great Brit-

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ain; and moreover, it was generally supposed that the Government of Great Britain had placed the Mosquitos in possession of Grey Town expressly in order to get hold of this entrance to the canal passage, for itself, and at all events to prevent its falling into the possession, or being subservient to the views of any other power.

On these grounds arose all the excitement here touching the British protectorate of Mosquito, and in this manner the United States became interested in the dispute between the Nicaraguans and ourselves.

It is indeed most certainly true that if the American Company having the grant, of which I have spoken, from Nicaragua, had been disposed to carry it out in its original terms, and if the United States Government had been prepared to accept the exact terms of the treaties made with Nicaragua by their agents, it would be impossible for Great Britain to favor an undertaking which expressly established a monopoly of trade, for American Citizens, through the most important passage (if such a Canal as that contemplated can be executed) that the commerce of the world can enjoy; and I cannot consider it unfortunate for the general interest, that Her Majesty's Government should have been in a position to make its consent necessary to a work of universal importance.

But both the American Company, to which I have alluded, and the American Government have latterly manifested an earnest desire to have it clearly understood that they will modify all that portion of their original engagements with Nicaragua which secures any advantages to one state, which another may not equally enjoy; and if such be the spirit which is to preside over the vast project under consideration, Great Britain has not only no interest to prevent its success, but every interest to forward its completion and provide for its security.

In this view of the case, the protectorate which Her Majesty exercises over the Mosquitos, instead of being prejudicial to the aforesaid enterprise may be an essential element in its favor; and all that has seemed to be required in order to bring Great Britain and the United States to a perfect understanding is that both should abandon every particular advantage, the one such as might be derived from the protectorate over the Mosquitos, and the other such as might be derived from any Contract or treaty with Nicaragua, and to make the fact that they do so, clear and palpable, taking as the basis of their thorough good understanding, the construction of that Canal which offers benefits common to the two, and dropping as a point of controversy those disputes as to the Nicaraguan and Mosquito Territory on which it is next to impossible that they should come to any agreement.

It is with such views that the inclosed convention has been drawn up, its object being to exclude all question of the disputes between Nicaragua and the Mosquitos, but to settle, in fact, all that it was essential to settle with regard to those disputes as far as the ship communication between the Atlantic and Pacific and the Navigation of the River San Juan were concerned.

There are indeed stipulations which extend farther than the mere engagement, on our part, to use our best endeavours to obtain the free transit of this River, inasmuch as that we also in the said convention agree, as do the United States, not to occupy or colonise either Nicaragua Costa Rica, the Mosquito Coast, or any part of Central America; but in consenting to these provisions I know that I merely carry out the views and opinions of Her Majesty's Government, which have been already expressed on this subject, though in a less formal manner.

I do not pretend to say that the project of convention, thus submitted to Your Lordship's consideration, is such either in its precise terms arrangements or enactments as I should have myself proposed, or, if there had been more time for alteration and discussion, adopted.

But it settled the main question immediately at issue, and also established a general basis for a common policy and perfect good understanding between ourselves and the United States in that portion of the world which has latterly been the scene of constant suspicions and angry rivalities on the part of our agents; and is moreover the record of great and noble views entertained and expressed by two great and kindred nations on one of the works most likely to commemorate our epoch, and to be of the utmost interest and importance to commerce and civilisation.

For these reasons, I confess, that I send it to Your Lordship with the humble confidence that it will as a whole, meet with your approval.

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At all events I know that it is an arrangement which Mr Lawrence could hardly have made in England, and that I myself could not have made here except after much preparation and under favorable circumstances.

I may add that it will probably be attacked with violence by the parties who are for supporting Mr Munroe's famous doctrine, at all hazards, and who contend that Mr Hise's convention is the only one that this country ought to adopt or sanction; but on the other hand, I think I can promise that it will be duly esteemed and approved of by the Senate, and carry with it the weighty sanction of all reasonable men.

Your Lordship is aware that the mode by which it has hitherto been sought to adjust this question, has been by engaging Her Majesty's Government to enter into a treaty with Nicaragua similar to one which should be entered into by this State, or rather, similar to one which has been entered into by Mr Squier, which treaty however was in such case to undergo certain modifications: But independently of the time which it would cost to settle the matter in this manner, a time which would allow every angry passion to be let loose upon the question here—it would also entail some settlement between ourselves and the Nicaraguans regarding the Mosquito Territory, which settlement is at present impossible; and thus the affair would be carried to that very precise point of difference between Great Britain and the United States, as to the extent of the Mosquito Territory, or the existence of the Mosquito Kingdom which it is our object to avoid. The present form of adjustment prevents any treaty between ourselves and Nicaragua on the subject, from being absolutely necessary, and defines all that is requisite for the interests of the United States to have defined, without touching anything which it would be delicate for our honor to deal with. It moreover binds up the two countries in a great and general policy of amity favorable to commerce and to peace; and in short having acted to the best of my judgement in this matter, and believing that I have exercised therein a sound discretion, I throw myself on Your Lordship's kindness and that of Her Majesty's Government, trusting I shall be excused by both if my zeal for the public service has led me into unintentional error.

The project of February 3, 1850, in a preamble and eight articles, became the basis of the Clayton-Bulwer Treaty; in the final instrument there were some changes and additions; these, with comparison of texts, are discussed below under "The Project and the Treaty".

The fundamental clauses of the project were those of Article 1, which was adapted to some extent from previous correspondence. Following the lengthy instruction to him of October 20, 1849, and the brief "private" directions dated the following day (both printed above), Lawrence, after a conversation with Palmerston, put forward in writing and rather categorically, two inquiries (note of November 8, 1849, printed above and in Blue Book, 1856, 6); those inquiries were answered very directly by Palmerston in his note of November 13 (printed above and in Blue Book, 1856, 7–8), in which he wrote in response to the first of them that "Her Majesty's Government do not intend to occupy or colonise Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America"; those words of engagement were taken into Article 1 of the project of February 3, 1850; but within a week thereafter officials of the Government at Washington deemed them insufficient.

Proposed Alterations

Clayton had signed the project of February 3, 1850, without "opportunity of consulting the President or his Cabinet", who were "as I informed you [Bulwer] entirely ignorant of our doings or intentions" (8 Clayton Papers, 1481–82, Clayton to Bulwer, February 11,

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1850); in that letter Clayton wrote that others differed with him and "insist that Great Britain shall plainly say 'we abandon the [Mosquito] protectorate every way'", and he spoke of the "futility of our labours"; as written, the project was not acceptable to President Taylor; on February 15 Clayton wrote that the project "is disapproved by our government and being a confidential paper is now to be considered as having never existed" (*ibid.*, 1503–6, draft to Lawrence); but Bulwer persisted in his efforts and was successful to the extent that he was able to send to London proposals of alterations made in part by "colleagues" of Clayton [1] (see *ibid.*, 1490–94, Bulwer to Clayton, February 14; *ibid.*, 1496–1500, Clayton to Bulwer, February 15; *ibid.*, 1509–11, Bulwer to Clayton, February 17; *ibid.*, 1512–13, Clayton to Bulwer, February 18; *ibid.*, 1514, Clayton to Lawrence, draft, February 18). Regarding these suggested alterations, Bulwer wrote in two despatches of February 18; first of these to be quoted is No. 31 (F.O. 5 : 511; printed in part, and with some editing, in Blue Book, 1856, 40–42):

I inclose to Your Lordship an extract from the Reports of Congress which will shew to you the efforts that are being made to have the Papers relative to Nicaragua laid before the Senate, and the refusal of the President to comply at present with this desire.

I am happy to say that in thus much the agreement I came to with Mr Clayton has been most advantageous.

Mr Clayton however informed me last Sunday [2] that some of his colleagues wish for alterations in the project which I had transmitted to you the week previous. This circumstance could not but occasion me considerable surprise, since the fact of his being the official organ of the President on Foreign Affairs, and residing on the spot where the Government was sitting, made me naturally conclude that anything suggested and signed by him would when the proper time came, receive a general assent from his Cabinet.[3]

Without however further dilating upon this subject I shall proceed to state the views which Mr Clayton says that some of his colleagues express.

These Gentlemen, he observes, say that though we The English declare that Great Britain will never fortify or colonize in the vicinity of the projected canal, a declaration also made by the United States, still as long as the territory bordering thereupon is in the hands of the Mosquitos, many will contend that we mean to do, under another name, that which we engage we will not do under our own; and that this argument will receive color and force from the fact that the Mosquitos are not able to establish a Government for themselves, and that the governing Council of the Mosquitos is entirely composed of Englishmen, which Council, nominally Mosquito, actually English, might build Forts, establish Colonies, and then call upon the protection of Great Britain.

For these reasons, says Mr Clayton, some of the Members of the Government contend that farther explanations or stipulations should accompany, or be embodied in, any Treaty of settlement between the two Countries; and they are furthermore anxious, in order to prevent all future disputes or difficulties, that some arrangement should be come to as to that part of the territory, now held by the Mosquitos, which extends along the River San Juan; so that the Mosquitos might be induced to abandon their claim on a fair consideration, and thus the complicated question of the British Protectorate be altogether set at rest.

[1] These "colleagues" included members of the Senate; see the conclusion of the remarks of Senator Soloman W. Downs, of Louisiana, on January 10, 1853, in Congressional Globe, XXII, 252.

[2] February 17 literally; but February 10 is meant.

[3] This is quite unfair; the project had hardly been "suggested" by Clayton; it had been signed *ad referendum;* and Bulwer had been told by Clayton that neither the President nor the Cabinet had been consulted (see 8 Clayton Papers, 1481–82. February 11, 1850).

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These observations undoubtedly come late, the whole of this subject having been frequently reviewed by Mr Clayton and myself, and we both of us deeming that at the present time the Treaty in question did all that was necessary by settling a basis on which the canal could be constructed and protected.

I must add that such, I have reason to know, is the opinion of the parties most concerned in the Canal, and also the opinion of some leading Statesmen of this Country; Nevertheless it is well to consider that the United States Government is in a very peculiar situation. On mere party questions it is in a minority in the Senate, and though party feelings have but a limited influence on this body in Foreign questions of high interest, they are not wholly to be lost sight of; The Presidents letter to the President of Nicaragua has in a certain degree compromised him personally; the treaty of Mr Squier, which I fear that gentleman could shew he made under Instructions, places this Cabinet also in an embarrassing position; and although both the Acts referred to were inconsiderate, and in my opinion unfair and unfriendly towards Great Britain, I found them accomplished; and in cases of this kind, we have to deal with questions as they are, and make the best of them.

These however are not the only considerations which would influence me in the matter. Our protection over the Mosquitos in their present position seems to me an advantageous accident for procuring the construction of the canal, and having it constructed on proper and general principles; but supposing the work finished and in use upon those principles, the position of the Mosquitos on this great highway, and our protectorate over them might be a frequent cause of embarrassment and trouble to us, and does not as it seems to me offer any compensating advantage.

My motive for not dealing with this question then, was, not because I deemed that it involved a great interest to our Country which it was difficult to abandon, but because it involves a nice point of honour which it was difficult to settle.

Moreover though I deemed it a duty under the circumstances to present to you an arrangement of the kind which I recently transmitted, as long as it contained little more than Your Lordship's own words and ideas, I was duly cautious not to extend my responsibility beyond the limits which absolute necessity required.

My present view is this. A new excitement since the last accounts[1] came in from Central America (which was just yesterday week) has been produced. It is quite certain that if Mr Clayton had not previously signed the document you have received, he would not do so now. But having done so, he is bound up inevitably, if the aforesaid document is approved of by you, in a conciliatory line of policy; and he will in such case omit nothing (for his fame and position depend thereupon) to make that policy succeed. His colleagues who are not so implicated in this course are not so warm. But their inclinations lean the same way, and they cannot feel themselves altogether free from an important act of the head of the Administration.

If therefore Your Lordship were to send me your formal Instructions to conclude such a Treaty as that which Mr Clayton and myself proposed, I think, notwithstanding what is now said, the Government would be loth to reject it even as it stands.

At the same time our intention in this matter,—and I am sure the spirit which actuates Your Lordship, is not to drive a bargain, (indeed we do not attempt this in the Convention proposed) but to come to the most friendly and satisfactory settlement of a debated question;—that question being debated between us and a Country with which we on every account desire to cultivate the most amicable relations, and the termination of it offering the means not merely of getting over one present and isolated difficulty, but of binding up together a variety of existing points of difficulty and difference, in a project calculated to be a comprehensive basis of future good understanding.

If therefore the project approved of by you as it is, could receive with Your Lordship's approval any additions which would make it yet more popular and successful here, I should for one be rejoiced.

I confess that I think it impossible for us now to give up the Country claimed by the Mosquitos to the Nicaraguans on any pretext or in any manner whatso-

[1] See the New York Herald for February 12 and 13, 1850, with correspondence between Squier and Chatfield.

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ever: nor do I think that we can abandon this People for any object, or under the aspect of any danger, to extermination, or to the hostility of any class of ennemies. On the other hand, the more we can do consistently with our own credit and the safety of the Mosquitos in furtherance of the contemplated Ship communication, and in demonstration of the fact that we neither claim nor seek exclusive benefits or controul over the same the better I think we shall manifest the feelings which I know Your Lordship to entertain.

I ought not, moreover, to disguise from Your Lordship that this Government is in great difficulties, that Mr Clayton is in great difficulties, that this question is becoming, the longer it remains in abeyance, the more intricate and perplexing, and that it contains within it, if not the seeds of actual war, the seeds of such hostile and angry excitement, as render war always possible; and very often produce many of the evils of war, even when war itself is not produced.

It is with all these considerations before me that I venture to request Your Lordship's permission, should the arrangement submitted to you meet in general with your approbation to accompany it with such explanation, or add thereto such clause, (should this be necessary for a settlement) as might, whilst preserving the perfect consistency of Her Majesty's Government and that honor and character which is to a State above all considerations, yet satisfy in a certain degree those suspicions which our present position as to the Mosquitos calls forth, and which it is the more desirable to banish since we really have no intention to profit by our connection in the manner that is supposed.

I feel a delicacy in thus for a moment presuming, until I receive some communication from Your Lordship, that you will place the negotiation in question in my hands; but at the same time, I may truly state that had I not ventured to act as I did in regard to it, the production of Papers before Congress, the discussions consequent thereon, and the different position which Mr Clayton would now have occupied must all have tended to diminish very considerably the chances of its prompt and favourable termination. Indeed the character which this Government wears, there being the President to look to on one side, and the Congress—at this moment in but a wavering disposition—on the other, makes it almost impossible for Mr Lawrence, or for any person at a distance, to arrange, and especially to make concessions on a matter which has finally to be adjusted in this Capital amidst, and by, such various authorities.

At the same time I feel that the task, if confided to me here, may become one of some difficulty, and that at this distance from Your Lordship, I could only be reconciled to it by your full Instructions and ample confidence.

Moreover I am bound to add my opinion that if nothing is done, and even that if nothing is done speedily to set this business at rest, and bring it to an amicable conclusion, the tone of opinion on this side of the Atlantic will raise it ere long into very serious importance.

The other and private despatch of Bulwer of February 18, 1850, regarding the proposed alterations, gave details thereof; its text, with the enclosure, the five "propositions" and comments thereon, follows (F.O. 5:511; not printed in Blue Book, 1856):

I have thought it better not to go into too many details in my Dispatch N° [31] of this days date, but rather to annex thereto the different propositions that have suggested themselves to me, or have been suggested as furnishing additional security that might possibly be wanted for terminating the arrangement which it has really become of serious importance to conclude. I add to each proposition my remarks upon it. My general impression as to what we can and cannot consent to, is in a few words, this. anything that does not give up the Mosquito territory to the Nicaraguans or abandon as unsound the claims of the Mosquitos, leaving that people without protection from their enemies or without compensation for any territory they may relinquish is possible; anything which places the Nicaraguans in the position of the Mosquitos, or which surrenders as untenable the claim or leaves exposed the persons of these Indians, is impossible.

I should say however that a great stress is laid by many here on the offers that have been made of annexation. They say "We could annex all Central America, therefore we ought to receive some compensation if we promise to annex nothing." But the Government here are nevertheless willing to add to the promise not to

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colonise, the promise *not to annex*, and moreover they always understand that whatever takes place as to the Sovereignty over the Mosquito territory all private rights or possessions therein are to be maintained.

I now submit to Your Lordship inclosed the different plans for completing the settlement in view, that may be worthy of your attention, should you think that the project as it stands is not in itself complete. I should state that I for my own part have never given up this point; nor can Mr Clayton with respect to his *own opinion*, do so. I ought to observe that it is not *all*, but any *one* of the different inclosed projects that I offer to Your Lordships consideration.

[Enclosure]

Proposition Nº 1	Remarks
Both parties agree that all territory in the vicinity of the canal, that is all and every Island or Islands within the distance of one Hundred Miles from the mouth of the San Juan River, and all the territory within one hundred miles of either side of the said canal, the San Juan River, and lake or lakes forming part of the interoceanic communication, shall be strictly neutral and free from any foreign influence or controul; and that neither of the contracting parties will ever exercise either directly or indirectly any influence or controul whatsoever over the said neutral territory, or in any manner interpose or interfere with the sovereignty or right to the land within the said neutral territory without the consent and approbation of the other party first obtained.	This is a suggestion made to Mr Clayton, as he told me confidentially, by his colleagues, and consequently if Your Lordship agrees to it, the whole affair is settled: but I ought to point out to you that it would withdraw our protection, I presume, from the whole Mosquito territory up to Bluefields, and consequently leave the Mosquitos to be driven out by the Nicaraguans, which would not be agreeable to us; or leave the Mosquitos, Nicaraguans and Costa-Ricans to fight about the said territory, which would not be very favorable to the construction of the Canal.
Proposition Nº 2	**Remarks**
That the two contracting parties should use their best endeavours to procure from the local authorities established along the whole extent of the ship canal that is to be established, and on each bank thereof a space of from five to ten miles to be applied to such purposes as may be deemed most beneficial to the commerce and traffic on the said ship communication. The aforesaid territory to be considered strictly neutral, and to be placed under the same guarantee and protection as the ship-communication itself.	This proposition has been made to Mr Clayton by a leading member in the Senate whom he consulted. Mr Clayton likes it, but does not yet know the opinion of his Cabinet with respect to it.
Proposition Nº 3.	**Remarks**
The two Contracting Parties should engage to use their best endeavours to obtain from the Mosquitos the relinquishment of their claim over the territory which extends from a line to be drawn across the Mosquito Territory twenty miles to the South of Bluefields, and the San Juan River. This territory shall be appropriated to such pur-	This may be a mode of getting rid, for the moment, of all difficulties, and providing for the future against any difficulties between the United States and ourselves with respect to Nicaragua or the Mosquitos. It would leave the question open, it is true, as to the sort of Government to be established over the Territory which the Mosquitos may

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poses as may be deemed most beneficial in aid of the objects of the Canal, and is to be subject to the same Regulations as the ship communication, vizt that the contracting Parties are to enjoy no exclusive privileges thereupon, and are to guarantee the neutrality of the same.

PROPOSITION Nº 4

The substitution of a declaration by both Parties in the terms of the Convention, instead of the Convention itself.

PROPOSITION Nº 5.

An explanation of the signification which you will attach to our agreement not to fortify colonize &c; and the manner in which this would be applicable to the Mosquitos, being protected by us, if they were to fortify, establish colonies of Englishmen and the like.

be induced to vacate, but as this is a question which would derive its importance from the construction of the Canal, its decision might be left to grow out of events, under the controul of an agreement that no decision should be come to that is not agreable to Great Britain and the United States.

REMARKS.

This would be a kind of way of settling matters provisionally, if the United States Government felt that the principles it subscribed to would be favourably received by the Country, but might be opposed from Party feeling in the Senate. It has however this great disadvantage, that a declaration by the President, though binding upon him personally is not binding upon the Country which is only bound by his opinions upon Foreign matters when they have received the sanction of the Senate.

REMARKS.

The value of this must depend upon the explanations which Your Lordship may be induced to give.

If they met the difficulties which Mr Clayton says have been suggested to him, they might be sufficient.

The foregoing despatches of February 18 were received at London on March 4 and were thus before Palmerston when his instruction of March 8 (see Blue Book, 1856, 45) approving the project was written; and this paragraph of that instruction was directly in answer to the suggestions or proposals of alteration which Bulwer had communicated (F.O. 115:106, No. 20):

I have also to instruct you to deliver to the American Plenipotentiary, at the time of the signature of the Convention, a Note stating that you have received the express order of your Government to declare, with reference to the engagement taken by my letter[1] to Mr Lawrence dated the 13th of November last, a Copy of which was inclosed in my Dispatch to Mr Crampton Nº 57, of the same date, that the British Government has no intention to make use of the Protection which Great Britain affords to the People of Mosquito, for the purpose of doing, under cover of that Protection, any of the things the intention to do which is disclaimed in the Letter to Mr Lawrence above referred to.

Bulwer's note to Clayton of March 27 (printed below) included, almost verbatim, the quoted direction of Palmerston; but in the weeks intermediate the transmittal to London of the project of February 3 followed by the suggested alterations therein, and the receipt and communication of Palmerston's views thereon (March 27), there were happenings at Washington which made doubtful the success of the negotiation.

[1] Printed above under the heading "Negotiations at London".

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THE PRESIDENTIAL MESSAGE OF MARCH 19, 1850

While word was awaited at Washington of the decision of the British Government on the project with the alterations proposed, there was also awaited an authoritative statement from London [1] regarding the British occupation of Tigre Island and other recent acts in that region. In the instructions to Lawrence of December 29 (cited and in part quoted above), he had been directed to ask "for a disavowal of all acts of interference by Mr. Chatfield or others, which have for their object to extend the British jurisdiction to any part of the Central American States". On January 27 Lawrence had a "long" conversation with Palmerston on the subject (in House Document No. 75, pp. 315–18, is printed a memorandum of that interview, with the omission of a final sentence and preceded by a few lines from the covering "private and confidential" despatch of February 8; the memorandum is in D.S., 60 Despatches, Great Britain, but the covering despatch is lacking; the memorandum is also printed in Manning, *op. cit.*, VII, 345–47); on January 30 Lawrence wrote a note to Palmerston enclosing copies of the protocol and decree of the proposed cession of Tigre Island to the United States (D.S., 60 Despatches, Great Britain, No. 29, February 8, 1850, enclosure; printed in Blue Book, 1856, 30–32, and in Manning, *op. cit.*, VII, 347–49); Palmerston answered on February 13 in these terms (printed in Blue Book, 1856, 34–35; D.S., 60 Despatches, Great Britain, No. 33, February 15, 1850, enclosure):

> The Undersigned Her Majesty's Principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the official note which was addressed to him on the 30th ultimo by Mr Abbott Lawrence, Envoy Extraordinary and Minister Plenipotentiary of the United States of America at this Court, inquiring whether the proceedings of Mr Chatfield, Her Majesty's Chargé d'Affaires at Guatemala, in ordering the occupation of certain islands in the Bay of Fonseca have been approved by Her Majesty's Government.
>
> The Undersigned begs to state to Mr Lawrence in reply, that, Her Majesty's Government having claimed compensation from the Governments of Honduras and Salvador for certain wrongs sustained by British subjects within the territories of those Republics, and the Governments of those States not having satisfied those demands, Mr Chatfield and Her Majesty's Naval Officers on the Atlantic and Pacific Coasts of America were instructed to take such steps as might be necessary for obtaining just redress. In execution of those general Instructions Mr Chatfield, in conjunction with the officer commanding one of Her Majesty's ships of war in the Pacific took possession of Tigre Island as a means of reprisal, and as a temporary pledge for obtaining from the Government of Honduras the satisfaction that was required; and the Undersigned apprehends that, according to the Law of Nations, such a proceeding was an allowable means of procuring redress. But when Her Majesty's Government were informed of what had taken place, the Undersigned stated in reply to Mr Chatfield that a reprisal of this particular kind ought not to have been made without specific Instructions from Her Majesty's Government, or without the concurrence of the British admiral commanding in the Pacific; and Mr Chatfield was therefore directed to restore the Island of Tigre to its former condition without prejudice to any

[1] On January 31, 1850, Clayton had written to Bulwer asking for such explanations of British policy regarding Tigre Island as might be in his power to give (D.S., 7 Notes to the British Legation, 230–31); on February 7 Bulwer answered at some length and in reassuring terms, but he was not at the time in a position definitely to commit his Government (D.S., 27 Notes from the British Legation). The two notes are printed in Manning, *op. cit.*, VII, 59, 349–50.

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measures which Admiral Hornby might afterwards deem it necessary or right to take in order to obtain satisfaction from the Government of Honduras.

Moreover, since that Instruction was addressed to Mr Chatfield, Her Majesty's Government have heard from Admiral Hornby that when he was informed of the temporary occupation of Tigre Island, knowing by previous communications which he had received from Her Majesty's Government that Her Majesty's Government did not wish that such a measure of reprisal should be resorted to as long as any other means of obtaining satisfaction could be used, he had immediately, and without waiting for any further Instructions from home, sent orders that the detachment which had been placed in occupation of Tigre Island should be withdrawn. Tigre Island has therefore long before this time been evacuated by Her Majesty's Forces. But Her Majesty's Government must not on that account be considered as giving up in any degree the claims which it has made on the Government of Honduras, and must hold itself free to use whatever means the Law of Nations may allow for obtaining the redress which it demands, if that redress should continue to be withheld.

With regard to the Declaration contained in the Letter [1] which the Undersigned addressed to Mr Lawrence on the 13th of November last stating that Her Majesty's Govt do not intend to occupy or colonize Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, it is unnecessary for the Undersigned to say that Her Majesty's Govt abide by that assurance; and it can scarcely be requisite for the Undersigned to point out to Mr Lawrence that the arrangement made by Mr Squier for the cession of Tigre Island to the United States would, if adopted by the Government of the United States, be entirely at variance with the declaration contained in Mr Lawrence's Letter [1] of the 8th of November, to which the abovementioned Letter of the Undersigned was a reply.

With respect to the other small Islands in the Bay of Fonseca belonging to the State of Salvador, on which Mr Chatfield had declared a lien as a pledge for the satisfaction which was required from the State of Salvador, Her Majesty's Government have been informed by Despatches recently received from Mr Chatfield that the Government of Salvador had made a satisfactory arrangement for the adjustment of those claims, and that he had therefore withdrawn the lien from those Islands.

When the foregoing note of Palmerston of February 13 was written, nothing was known at London of the project of February 3, as it was not received there until February 18. Palmerston's note of February 13 was received at the Department of State by and probably on March 14.[2] Palmerston's favorable answer to the project of February 3, 1850, was written on March 8; Clayton was informed of it by the note of Bulwer of March 27.[3] Thus there was an interval of something like two weeks between the arrival at Washington of Palmerston's response regarding Tigre Island and the arrival there of his acceptance of the project.

[1] Printed above under the heading "Negotiations at London".

[2] The covering despatch, No. 33, of Friday, February 15, is marked in pencil as received on June 10; but this can mean no more than the date when it reached the hands of the initialing clerk, Alexander H. Derrick; despatches Nos. 31, 32, and 34, of February 11, 12, and 21 respectively, are all marked as received on March 14; at the time communication between the two capitals required usually fifteen days or thereabouts; but the British mail steamers were then leaving Liverpool only on alternate Saturdays (February 23, March 9, etc.); and the two American mail steamers, with sailings from Southampton on the 20th of each month, were temporarily out of commission (see notices in the London Times of February 4, 1850). The four despatches mentioned doubtless reached New York on March 11 by the *Canada*, sixteen days from Liverpool via Halifax (see the Daily National Intelligencer of March 12 and 13, 1850).

[3] This note is marked in pencil as received on April 17; but this can mean no more than the date when it reached the hands of the initialing clerk, Alexander H. Derrick; the actual date of receipt was March 28 (see 8 Clayton Papers, 1594).

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Palmerston's note of February 13 was not well received at Washington. Bulwer wrote on the subject in his private and confidential despatch of March 16, 1850, from which the two opening paragraphs are excerpted (F.O. 5:512):

> I found Mr Clayton rather disturbed a day or two ago by the receipt of Your Lordship's note of the 13th of February to Mr Lawrence, in reply to that which Mr Lawrence had addressed, on the 30th of January, to Your Lordship on the subject of the taking possession of Tigre Island by Mr Chatfield.
>
> Mr Clayton said that the President had felt much chagrined by this communication, and had reproached him, Mr Clayton, with having previously misinterpreted Your Lordship's sentiments, adding that it was now evident that Your Lordship meant to retain the right of seizing any portion of Central America for debts; and that as there was no State in Central America which had not debts, so there was no State which Her Majesty's Government could not, and might not seize. "This" said Mr Clayton "is placing a different interpretation upon the declaration made last November by Great Britain and the United States, from that which this Country places upon it. When we said we would not take possession of or occupy, we meant we would not do so under any consideration, and Lord Palmerston must know from Mr Lawrence that I did not approve of Mr Squier's Treaty negociating the surrender of Tigre Island to the United States"

Clayton concluded that the note of Palmerston of February 13 meant the failure of the project of February 3, 1850 (see the reserving words of paragraphs two and four of the note); he wrote to Lawrence (apparently on March 18) that "the projet of a treaty between us has entirely failed for the present in consequence of this construction of the word occupy" (8 Clayton Papers, 1541; see also *ibid.*, 1532–40, of uncertain date).

According to Bulwer, Clayton considered, "notwithstanding all I told him to the contrary", that Palmerston's note of February 13 was "a declaration that the British Government would seize and occupy, and claim dominion over any parts of Central America that it thought proper, and that consequently your Lordship would not agree to the great principle of the Treaty which was sent home to be submitted to you, or give me such instructions as would enable me to carry it out" (Blue Book, 1856, 48–49, March 31, 1850). The project being thus deemed by Clayton at an end (although it was subject to approval by the two Governments up to April 10), the Squier-Zepeda Treaty with Nicaragua of September 3, 1849, was adopted as a policy alternative to that of the project and was sent to the Senate with the presidential message of March 19, 1850;[1] and of this submission to the Senate Bulwer was not informed (*ibid.*).

It is obvious and was well recognized at the time that both Article 35 of the Squier-Zepeda Treaty of September 3, 1849, and the canal contract therein mentioned, required modification to be compatible with the project of February 3, 1850. Clayton had written to Rives at Paris on January 26, while the project was being framed, that the

[1] At this time Clayton, by a "private note", requested Lawrence at London "to argue the question of the protectorate of the Mosquitoes"; Lawrence declined, remarking that he was "not informed of the present state of the negotiation at Washington" (see D.S., 60 Despatches, Great Britain, No. 39, April 5, 1850; Manning, *op. cit.*, VII, 360–61; the "private note" of Clayton was probably that cited from 8 Clayton Papers, 1541).

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Squier-Zepeda Treaty would "soon be submitted to the Senate" (D.S., 15 Instructions, France, 125–26); but in his answer of January 2 to the note of the Nicaraguan Chargé d'Affaires at Washington, Eduardo Carcache, of December 31, 1849, Clayton had mentioned the probable necessity of supplementary articles (see House Document No. 75, pp. 312–13); and in a note of February 5, 1850, to Carcache, Clayton had more specifically suggested "full powers and instructions with a view to a new compact on the subject of the inter-oceanic communication" and had said that modifications of the canal contract were to be proposed by the company and that it had "been deemed best not to lay the Treaty before the Senate" until the results were known (D.S., 1 Notes to the Central American Legations, 3–5; the note of Carcache and the two notes to him are in Manning, *op. cit.*, III, 487, 57–59; see also *ibid.*, 61–63, June 17, 1850).

However, in the lengthy presidential message of March 19, 1850, presently to be quoted, it was definitely said, in connection with express disapproval of "the British pretension to the port of San Juan in right of the Mosquito King", that the Squier-Zepeda Treaty would be ratified if the Senate so advised; and the only amendments suggested by the President were an extension of the term of duration and an express offer to other nations of "the same advantages which we propose for ourselves on the same conditions upon which we shall have acquired them."

The message includes an account of the controversy over Greytown (called San Juan de Nicaragua), with some rather caustic comments on the policy of the preceding Polk administration. In the message are mentioned [1] six treaties which had been signed with four of the countries of Central America (all but Costa Rica); but for the most part their dates are not given, and they are thus somewhat difficult of identification; the deficiencies will be found supplied in footnotes. The text of the message follows (Executive Journal, VIII, 153–58):

I herewith transmit to the Senate, for their advice in regard to its ratification, "a general treaty of amity, navigation, and commerce" between the United States of America and the State of Nicaragua, concluded at Leon, by E. George Squier, chargé d'affaires of the United States, on their part, and Señor Zepeda, on the part of the Republic of Nicaragua.[2]

I also transmit, for the advice of the Senate in regard to its ratification, "a general treaty of amity, navigation, and commerce," negotiated by Mr. Squier with the Republic of San Salvador.[3]

I also transmit to the Senate a copy of the instructions to and correspondence with the said chargé d'affaires relating to those treaties.

I also transmit, for the advice of the Senate in regard to its ratification, "a general treaty of peace, amity, commerce, and navigation," negotiated by Elijah Hise, our late chargé d'affaires, with the State of Guatemala.[4]

I also transmit, for the information of the Senate, a copy of a treaty [5] negotiated by Mr. Hise with the Government of Nicaragua on the twenty-first of June last, accompanied by copies of his instructions from and correspondence with the Department of State.

[1] Nothing is said of the Squier-Guerrero Treaty with Honduras or of the proposed cession of Tigre Island to the United States.

[2] The Squier-Zepeda Treaty, signed at León September 3, 1849.

[3] The treaty with El Salvador of January 2, 1850 (Document 139).

[4] The treaty with Guatemala of March 3, 1849 (Document 135).

[5] The Hise-Selva Convention, signed at Guatemala June 21, 1849.

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On the twelfth day of November, eighteen hundred and forty-seven, Señor Buétrago, secretary of state and of the affairs of war and foreign relations and domestic administration of the Supreme Government of the State of Nicaragua, addressed a letter from the Government House, at Leon, to Mr. Buchanan, then Secretary of State of the United States, asking the friendly offices of this Government to prevent an attack upon the town of San Juan de Nicaragua, then contemplated by the British authorities as the allies of the Mosquito King. That letter, a translation of which is herewith sent, distinctly charges "that the object of the British, in taking this key of the continent, is not to protect the small tribe of the Musquitos, but to establish their own Empire over the Atlantic extremity of the line, by which a canal connecting the two oceans is most practicable, insuring to them the preponderance on the American continent as well as their direct relations with Asia, the East Indies, and other important countries in the world." No answer appears to have been returned to this letter.

A communication was received by my predecessor from Don José Guerrero, President and Supreme Director of the State of Nicaragua, dated the 15th day of December, 1847, expressing his desire to establish relations of amity and commerce with the United States, a translation of which is herewith inclosed. In this the President of Nicaragua says: "My desire was carried to the utmost on seeing in your message, at the opening of the 29th Congress of your Republic, a sincere profession of political faith in all respects conformable with the principles professed by these States, determined, as they are, to sustain with firmness the continental cause, the rights of Americans in general, and the noninterference of European powers in their concerns." This letter announces the critical situation in which Nicaragua was placed, and charges upon the Court of Saint James a "well-known design to establish colonies on the coast of Nicaragua, and to render itself master of the interoceanic canal, for which so many facilities are presented by the isthmus in that State." No reply was made to this letter.

The British ships of war Alarm and Vixen arrived at San Juan de Nicaragua on the 8th day of February, 1848, and on the 12th of that month the British forces consisting of 260 officers and men, attacked and captured the post of Serapaqui, garrisoned, according to the British statements, by about 200 soldiers, after a sharp action of one hour and forty minutes.

On the 7th day of March, 1848, articles of agreement were concluded by Captain Locke, on the part of Great Britain, with the commissioners of the State of Nicaragua, in the Island of Cuba, in the lake of Nicaragua, a copy of which will be found in the correspondence relating to the Mosquito territory, presented to and published by the House of Commons of Great Britain on the 3d day of July, 1848, herewith submitted. A copy of the same document will also be found accompanying the note of the minister for foreign affairs of Nicaragua to the Secretary of State of the United States, under date the 17th March, 1848.

By the 3d article of the agreement it is provided that Nicaragua "shall not disturb the inhabitants of San Juan, understanding that any such act will be considered by Great Britain as a declaration of open hostilities." By the 6th article it is provided that these articles of agreement will not "hinder Nicaragua from soliciting by means of a commissioner to Her Britannic Majesty a final arrangement of these affairs."

The communication from Señor Sebastian Salinas, the secretary of foreign affairs of the State of Nicaragua, to Mr. Buchanan, the Secretary of State of the United States, dated 17th March, 1848, a translation of which is herewith submitted, recites the aggressions of Great Britain and the seizure of a part of the Nicaraguan territory in the name of the Mosquito King. No answer appears to have been given to this letter.

On the 28th day of October, 1847, Joseph W. Livingston was appointed by this Government consul of the United States for the port of San Juan de Nicaragua. On the 16th day of December, 1847, after having received his exequatur from the Nicaraguan Government, he addressed a letter to Mr. Buchanan, Secretary of State, a copy of which is herewith submitted, representing that he had been informed that the English Government would take possession of San Juan de Nicaragua in January, 1848.

In another letter, dated the 8th of April, 1848, Mr. Livingston states that "at the request of the minister for foreign affairs of Nicaragua he transmits a package

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of papers containing the correspondence relative to the occupation of the post of San Juan by British forces in the name of the Mosquito nation."

On the 3d day of June, 1848, Elijah Hise being appointed chargé d'affaires of the United States to Guatemala received his instructions, a copy of which is herewith submitted. In these instructions the following passages occur: "The independence as well as the interests of the nations on this continent require that they should maintain the American system of policy entirely distinct from that which prevails in Europe. To suffer any interference on the part of the European Governments with the domestic concerns of the American Republics, and to permit them to establish new colonies upon this continent, would be to jeopard their independence and to ruin their interests. These truths ought everywhere throughout this continent to be impressed on the public mind. But what can the United States do to resist such European interference whilst the Spanish-American Republics continue to weaken themselves by division and civil war, and deprive themselves of the ability of doing anything for their own protection?" This last significant inquiry seems plainly to intimate that the United States could do nothing to arrest British aggression while the Spanish-American Republics continue to weaken themselves by division and civil war, and deprive themselves of the ability of doing anything for their protection.

These instructions, which also state the dissolution of the Central American Republic, formerly composed of the five States of Nicaragua, Costa Rica, Honduras, St. Salvador, and Guatemala, and their continued separation, authorize Mr. Hise to conclude treaties of commerce with the Republics of Guatemala and San Salvador, but conclude with saying that it was not deemed advisable to empower Mr. Hise to conclude a treaty with either Nicaragua, Honduras, or Costa Rica until more full and statistical information should have been communicated by him to the Department in regard to those States than that which it possesses.

The States of Nicaragua, Costa Rica, and Honduras are the only Central American States whose consent or co-operation would in any event be necessary for the construction of the ship canal contemplated between the Pacific and Atlantic Oceans by the way of Lake Nicaragua.

In pursuance of the 6th article of the agreement of the 7th of March, 1848, between the forces of Great Britain and the authorities of Nicaragua, Señor Francisco Castillon was appointed commissioner from Nicaragua to Great Britain, and on the 5th day of November, 1848, while at Washington, on his way to London, addressed a letter to the Secretary of State, a translation of which is herewith submitted, asking this Government to instruct its minister plenipotentiary residing in London to sustain the right of Nicaragua to her territory claimed by Mosquito, and especially to the port of San Juan, expressing the hope of Nicaragua, "that the Government of the Union, firmly adhering to its principle of resisting all foreign intervention in America would not hesitate to order such steps to be taken, as might be effective, before things reached a point in which the intervention of the United States would prove of no avail." To this letter, also, no answer appears to have been returned, and no instructions were given to our minister in London, in pursuance of the request contained in it.

On the 3d day of March, 1847, Christopher Hempstead was appointed consul at Belize, and an application was then made for his exequatur through our minister in London, Mr. Bancroft. Lord Palmerston referred Mr. Bancroft's application for an exequatur for Mr. Hempstead to the colonial office. The exequatur was granted, and Mr. Hempstead, in a letter to the Department of State, bearing date the 12th day of February, 1848, a copy of which is herewith submitted, acknowledged the receipt of his exequatur from Her Britannic Majesty, by virtue of which he has discharged his consular functions. Thus far this Government has recognized the existence of a British Colony at Belize, within the territory of Honduras. I have recalled the consul, and have appointed no one to supply his place.[1]

On the 26th day of May, 1848, Mr. Hempstead represented, in a letter to the Department of State, that the Indians had "applied to Her Majesty's superintendents at Belize for protection, and had desired him to take possession of the territory which they occupied and take them under his protection as British subjects," and he added, that in the event of the success of their application, "the

[1] The date of the recall was March 1, 1850.

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British Government would then have possession of the entire coast from Cape Conte to San Juan de Nicaragua." In another letter, dated the 29th day of July, 1848, he wrote: "I have not a doubt but the designs of Her Majesty's officers here and on the Mosquito shore are to obtain territory on this continent." The receipt of this letter was regularly acknowledged on the 29th day of August, 1848.

When I came into office I found the British Government in possession of the port of San Juan, which it had taken by force of arms after we had taken possession of California and while we were engaged in the negotiation of a treaty for the cession of it, and that no official remonstrance had been made by this Government against the aggression, nor any attempt to resist it. Efforts were then being made by certain private citizens of the United States to procure from the State of Nicaragua, by contract, the right to cut the proposed ship-canal, by the way of the river San Juan and the lakes of Nicaragua and Managua to Realejo, on the Pacific Ocean. A company of American citizens entered into such a contract with the State of Nicaragua. Viewing the canal as a matter of great importance to the people of the United States, I resolved to adopt the policy of protecting the work, and binding the Government of Nicaragua, through whose territory it would pass, also to protect it. The instructions to E. George Squier, appointed by me chargé d'affaires to Guatemala, on the 2d day of April, 1849, are herewith submitted, as fully indicating the views which governed me in directing a treaty to be made with Nicaragua. I considered the interference of the British Government on this continent, in seizing the port of San Juan, which commanded the route believed to be the most eligible for the canal across the Isthmus, and occupying it at the very moment when it was known, as I believe, to Great Britain, that we were engaged in the negotiation for the purchase of California, as an unfortunate coincidence, and one calculated to lead to the inference that she entertained designs by no means in harmony with the interests of the United States.

Seeing that Mr. Hise had been positively instructed to make no treaty, not even a treaty of commerce with Nicaragua, Costa Rica, or Honduras, I had no suspicion that he would attempt to act in opposition to his instructions; and, in September last, I was, for the first time, informed that he had actually negotiated two treaties with the State of Nicaragua, the one a treaty of commerce,[1] the other a treaty for the construction of the proposed ship-canal,[2] which treaties he brought with him on his return home. He also negotiated a treaty of commerce [3] with Honduras, and in each of these treaties it is recited that he had full powers for the purpose. He had no such powers; and the whole proceeding on his part, with reference to those States, was not only unauthorized by instructions, but in opposition to those he had received from my predecessor and after the date of his letter of recall and the appointment of his successor. But I have no evidence that Mr. Hise, whose letter of recall (a copy of which is herewith submitted) bears date the 2d day of May, 1849, had received that letter on the 21st day of June, when he negotiated the treaty [2] with Nicaragua. The difficulty of communicating with him was so great that I have reason to believe he had not received it. He did not acknowledge it.

The 12th article of the treaty [2] negotiated by Mr. Hise, in effect, guarantees the perfect independence of the State of Nicaragua and her sovereignty over her alleged limits, from the Caribbean Sea to the Pacific Ocean, pledging the naval and military power of the United States to support it. This treaty authorizes the chartering of a corporation, by this Government, to cut a canal outside of the limits of the United States and gives to us the exclusive right to fortify and command it. I have not approved it, nor have I now submitted it for ratification; not merely because of the facts already mentioned, but because on the 31st day of December last, Señor Edwardo Carcache, on being accredited to this Government, as chargé d'affaires from the State of Nicaragua, in a note to the Secretary of State, a translation of which is herewith sent, declared that he was "only

[1] The treaty with Nicaragua signed at Guatemala May 31, 1849 (D.S., Unperfected S2).

[2] The Hise-Selva Convention of June 21, 1849 (D.S., Unperfected T2).

[3] The treaty with Honduras signed at Guatemala May 28, 1849 (D.S., Unperfected V1).

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empowered to exchange ratifications of the treaty concluded with Mr. Squier, and that the special convention concluded at Guatemala by Mr. Hise, the chargé d'affaires of the United States, and Señor Selva, the Commissioner of Nicaragua, had been (as was publicly and universally known), disapproved by his Government."

We have no precedent in our history to justify such a treaty as that negotiated by Mr. Hise, since the guarantees we gave to France of her American possessions.[1] The treaty [2] negotiated with New Granada on the 12th day of December, 1846, did not guarantee the sovereignty of New Granada on the whole of her territory, but only over "the single province of the Isthmus of Panama" immediately adjoining the line of the railroad, the neutrality of which was deemed necessary, by the President and Senate, to the construction and security of the work.

The 35th article of the treaty [3] with Nicaragua, negotiated by Mr. Squier, which is submitted for your advice in regard to its ratification, distinctly recognizes the rights of sovereignty and property which the State of Nicaragua possesses in and over the line of the canal therein provided for. If the Senate doubt on that subject, it will be clearly wrong to involve us in a controversy with England by adopting the treaty; but after the best consideration which I have been able to give to the subject, my own judgment is convinced that the claims of Nicaragua are just, and that as our commerce and intercourse with the Pacific require the opening of this communication from ocean to ocean, it is our duty to ourselves to assert their justice.

This treaty is not intended to secure to the United States any monopoly or exclusive advantage in the use of the canal. Its object is to guarantee protection to American citizens and others who shall construct the canal, and to defend it, when completed, against unjust confiscations or obstructions, and to deny the advantages of navigation through it to those nations only which shall refuse to enter into the same guarantees. A copy of the contract of the canal company is herewith transmitted, from which, as well as from the treaty, it will be perceived that the same benefits are offered to all nations in the same terms.

The message of my predecessor to the Senate, of the 10th February, 1847, transmitting for ratification the treaty with New Granada,[4] contains in general the principles by which I have been actuated in directing the negotiation with Nicaragua. The only difference between the two cases consists in this: In that of Nicaragua, the British Government has seized upon part of her territory and was in possession of it when we negotiated the treaty with her. But that possession was taken after our occupation of California, when the effect of it was to obstruct or control the most eligible route for a ship communication to the territories acquired by us on the Pacific. In the case of New Granada, her possession was undisturbed at the time of the treaty; though the British possession, in the right of the Mosquito King, was then extended into the territories claimed by New Granada, as far as Boca del Toro.[5] The professed objects of both the treaties are to open communications across the Isthmus to all nations and to invite their guarantees on the same terms. Neither of them proposes to guarantee territory to a foreign nation, in which the United States will not have a common interest with that nation. Neither of them consitutes an alliance for any political object, but for a purely commercial purpose, in which all the navigating nations of the world have a common interest. Nicaragua, like New Granada, is a power which will not excite the jealousy of any nation.

[1] See the Treaty of Alliance with France of February 6, 1778 (Document 2).

[2] Document 125.

[3] The Squier-Zepeda Treaty of September 3, 1849.

[4] The treaty of December 12, 1846 (Document 125).

[5] The Bocas del Toro incident of August 1841 can hardly be said to have extended British "possession" to that point, although claim of right on behalf of the "King" of Mosquito was then made (see Lockey, "A Neglected Aspect of Isthmian Diplomacy", in American Historical Review, XLI, 299, and the writings there cited); for accounts of the incident, see the despatch of William Nelson, consul of Panamá, of November 24, 1841, and enclosures thereto (D.S., 1 Consular Despatches, Panamá), and the despatch of James Semple, Chargé d'Affaires at Bogotá, of February 26, 1842 (D.S., 9 Despatches, Colombia, No. 44; printed in Manning, *op. cit.*, V, 587–88).

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As there is nothing narrow, selfish, illiberal, or exclusive in the views of the United States as set forth in this treaty; as it is indispensable to the successful completion of the contemplated canal to secure protection to it from the local authorities and this Government, and as I have no doubt that the British pretension to the port of San Juan in right of the Mosquito King is without just foundation in any public law ever before recognized, in any other instance, by Americans or Englishmen, as applicable to Indian titles on this continent, I shall ratify this treaty in case the Senate shall advise that course. Its principal defect is taken from the treaty with New Granada; the negotiator having made it liable to be abrogated on notice after twenty years. Both treaties should have been perpetual or limited only by the duration of the improvements they were intended to protect. The instructions to our chargé d'affaires, it will be seen, prescribe no limitation for the continuance of the treaty with Nicaragua. Should the Senate approve of principle of the treaty an amendment in this respect is deemed advisable; and it will be well to invite by another amendment the protection of other nations, by expressly offering them in the treaty what is now offered by implication only, the same advantages which we propose for ourselves on the same conditions upon which we shall have acquired them. The policy of this treaty is not novel, nor does it originate from any suggestion either of my immediate predecessor or myself. On the 3d day of March, 1835, the following resolution referred to by the late President in his message to the Senate relative to the treaty with New Granada was adopted in executive session [1] by the Senate without division: "*Resolved*, That the President of the United States be respectfully requested to consider the expediency of opening negotiations with the Governments of Central America and New Granada, for the purpose of effectually protecting by suitable treaty stipulations with them such individuals or companies as may undertake to open a communication between the Atlantic and Pacific Oceans by the construction of a ship-canal across the isthmus which connects North and South America, and of securing forever by such stipulations the free and equal rights of navigating such a canal to all such nations on the payment of such reasonable tolls as may be established, to compensate the capitalists who may engage in such undertaking and complete the work."

President Jackson accorded with the policy suggested in this resolution, and, in pursuance of it, sent Charles Biddle as agent to negotiate with the Governments of Central America and New Granada. The result is fully set forth in the report [2] of a select committee of the House of Representatives, of the 20th of February, 1849, upon a joint resolution of Congress, to authorize the survey of certain routes for a canal or railroad between the Atlantic and Pacific Oceans. The policy indicated in the resolution of the 3d March, 1835, then adopted by the President and Senate, is that now proposed for the consideration and sanction of the Senate. So far as my knowledge extends, such has ever been the liberal policy of the leading statesmen of this country; and by no one has it been more earnestly recommended than by my lamented predecessor.

The three treaties submitted to the Senate with the foregoing message (Guatemala, March 3, 1849, Document 135; El Salvador, January 2, 1850, Document 139; and the Squier-Zepeda Treaty with Nicaragua of September 3, 1849) were referred to committee and ordered printed with the accompanying papers (Executive Journal, VIII, 159, 163); only the Squier-Zepeda Treaty is here of importance; no action was taken on it by the Senate; the signed original of that treaty remained in the Senate until it was returned to the Department of State pursuant to the resolution of February 14, 1876, following a request made by Secretary of State Fish in a letter of February 9, 1876, to Senator Cameron, Chairman of the Senate Foreign Relations

[1] The resolution, proposed by Senator John M. Clayton, of Delaware, was adopted in legislative session on March 3, 1835 (see Senate Journal, 23d Congress, 2d session, serial 265, p. 238).

[2] House Report No. 145, 30th Congress, 2d session, serial 546.

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Committee (see Congressional Record, IV, pt. 2, p. 1058, February 14, 1876).

The Senate print of the message of March 19 with the accompanying papers is not now available; among the papers were those on Mosquito previously presented to Parliament (British and Foreign State Papers, XXXVIII, 641–795); all other papers with the message, except the texts of the three treaties submitted to the Senate, are included among those printed in House Document No. 75.

The Concluding Negotiations

It was on March 25 that the presidential message of March 19 was read in the Senate; about the same date Bulwer had received from London the approval by the British Government of the project of February 3, 1850, which was expressed in the instruction of Palmerston of March 8 (Blue Book, 1856, 45).

Bulwer felt that Clayton should have informed him of the submission of the Squier-Zepeda Treaty to the Senate and thought that he had "fair ground for complaint"; but he made no "reproaches" on that account; the contents of the instruction of March 8 were communicated to Clayton (by March 28), who hoped that he would soon be furnished with power to sign; the point that it would be necessary to alter the Squier-Zepeda Treaty was considered, and Clayton deemed it "very advisable, that Great Britain should make a Treaty with Nicaragua, similar to that which will in such case be made by the United States" (see *ibid.*, 48–49, March 31, 1850). The formal communication to Clayton of the approval by the British Government of the project of February 3, 1850, was by the following note of Bulwer of March 27; of the three substantive paragraphs of that note, the second and third were a very close paraphrase of the antepenultimate and final paragraphs of the instruction of Palmerston of March 8 (cited above); the statement regarding the declaration to be made on behalf of the British Government in respect of the Mosquito protectorate is word for word the same in the two papers (D.S., 27 Notes from the British Legation):

> I have the honour to inform you that I am authorised to state that should the inclosed project of a Convention with which you are already acquainted be agreeable to the United States Government, that of Her Majesty would be willing to agree to, and has given me full Powers to conclude the same, with a view of thereby facilitating and protecting the construction of a Ship Canal between the Atlantic and Pacific Oceans, and also with a view of still further consolidating the present friendly and intimate relations between the two great Commercial Nations which would be the Contracting Parties to this arrangement.
>
> I have furthermore to state that if the aforesaid Convention should be entered into, I have the express order, at the time of its signature, to declare with reference to the engagement taken by Viscount Palmerston's letter[1] to M[r] Lawrence dated the 13th of November last, that the British Government has no intention to make use of the protection which Great Britain affords to the People of Mosquito for the purpose of doing, under cover of that protection, any of the things the intention to do which is disclaimed in the letter to M[r] Lawrence above referred to.

[1] Printed above under the heading "Negotiations at London".

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Moreover after the Convention in question shall have been signed Her Majesty's Government would be happy to concert with the Government of the United States as to the mode and form in which the engagement contained in the 6th Article of the Draft of Convention should be carried into effect: Whether by Treaties with other Powers comprizing Stipulations in harmony with those contained in the proposed Convention between Great Britain and the United States or by Treaties of accession; And Her Majesty's Government are of opinion that if Treaties of Accession should be adopted, the Convention should be annexed to each of such Treaties, accompanied by an engagement to adopt the principles and stipulations therein recorded, so far as they may be applicable to the acceding Power.

In answer to the note of Bulwer of March 27 (received March 28), it was proposed to declare in an American note "that nothing in this treaty should it be entered into by the United States shall be construed to be an admission on the part of this Government, of any right or title, whatever in the Mosquito King, to any part of Central America or of what is called the Mosquito coast", and with this to sign the convention (see the draft of a formal note to Bulwer of April 6, 1850, written by Clayton under instructions from the President; 8 Clayton Papers, 1594–97); and in that proposed note express mention was made of knowledge on the part of the British Government of "the fact that the United States had negotiated a treaty (now before the Senate) recognizing the title of Nicaragua over the line of the Canal". A private letter of Clayton to Bulwer of the same date contained the statement that the formal note had been arranged by the President and Cabinet after full consideration and included this paragraph (*ibid.*, 1598):

This note is deemed by the President indispensable to define his position before signing the Treaty. He will not suffer it to be signed on any other terms.

To that proposed note, and especially to the reference therein to the Squier-Zepeda Treaty, Bulwer objected in strong terms, regarding it as "breaking off at this late moment, and in no kindly manner, an arrangement conducted throughout by me, and hitherto by both, in the most friendly spirit" (*ibid.*, 1601, April 7). Clayton answered at some length on April 8; he said that he had "consulted the Prest again to day on the subject since the receipt of yr. note. He thinks the reference to the [Squier-Zepeda] treaty before the Senate due to his own character for frankness lest it shd be charged upon him that he had suppressed anything which it was proper you shd be apprized of in regard to his intentions should the Senate recognize the Nica title. He has carefully read over our projet of a treaty & every part of it & maintains that there is not a syllable in it inconsistent with his recognition of the Nica title over the line of the Canal & that if he refuses to recognize that title he breaks faith and forfeits the right acquired by the Nicaragua treaty & the contract to cut the canal wh. that treaty protects". But Clayton added that he himself "did not consider it at all important to make or omit this reference [to the Squier-Zepeda Treaty] at this time" (*ibid.*, 1603–9). Bulwer replied (April 9) in this long private and confidential letter (*ibid.*, 1610–23) in which he summarized the negotiation:

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I received your letter of the 8th Instant last night, when being indisposed and having gone to bed I could not answer it. In doing so this morning I beg to assure you that you need not apologise to me for want of ability in the composition. Whatever you write is always most able, but you will forgive me for saying that in the course of your argument on this occasion you have omitted some of the main points on which my own opinions are founded. I beg therefore to give you a succinct statement of the facts out of which the case at present under discussion between us has arisen.

I need not call to your recollection that two or three years ago your Country gained great accessions of Territory from the State of Mexico, as well as by the annexation of Texas. This was accompanied by war, and great differences of opinion between the United States and the Mexican Government. We stood perfectly aloof from these affairs, and though all persons might entertain opinions as to the grounds of the contest to which I have alluded (you yourself entertained opinions on this subject at variance with those of the United States Cabinet of the day) we never interposed, by our expression of any opinion, in the quarrel. About this period it so happened that in consequence of very old engagements we were called upon to take part with the Mosquito people against the people of Nicaragua. We did so after due notice of the causes of our interposition, and finally displaced the Nicaraguans from a territory which they had recently occupied and which we did not believe they had a right to possess. The whole of this took place without any observation on the part of the United States, which nevertheless when we gave notice of the course we should pursue, or subsequently when we had pursued this course, might have entered a protest thereupon. The Nicaraguans alone objected and had their objections, as Her Majesty's Government thought conclusively, and at all events decidedly answered. During the course of last year however, it came to the knowledge of Her Majesty's Government that some Agents from the United States had made Treaties with the State of Nicaragua, recognizing its claims over the disputed territory with an implication more or less formal that it would support those claims. When this intelligence reached England it caused great surprise, and it is to be remarked that there was not a single periodical which, whatever view it might take of this transaction, did not say that Great Britain was bound in honour to stand by the course it had pursued, and that if the facts as stated were true, and the American Agents in question had acted upon authority, the course pursued by this Government was very unkind, unfriendly, and unprovoked, and that a very serious difference would thus be created between the United States Government and the Government of Great Britain.

At this time Mr Rives passed through London and quieted the excitement which had begun to exist by stating to Lord Palmerston that all that the United States required was a free passage across the Isthmus for the construction of a Ship communication by the River San Juan and the Lakes of Nicaragua between the two Oceans. In this state things remained until Mr Lawrence came to England—and it is true that Mr Lawrence did state to me privately that your Government disputed the Mosquito title, but in a note [1] which he wrote to Lord Palmerston, and which being written immediately upon his arrival must it is to be presumed have expressed the views at that time entertained by his Government, not a word was said respecting the Mosquito and Nicaraguan dispute, but Her Majesty's Government was asked whether it meant to occupy, colonise, or fortify any part of Central America, including the Mosquito Coast, and answered in the negative. Here the matter stood when I left England. On my arrival here when I entered into conversation with you on the subject in question my language was, as nearly as I can remember, this—"We can agree upon the con-"struction of a Ship Canal which you say is your main object. We will give you "every assurance as to our willingness to cooperate with you for this purpose, and "guarantee you from every possibility of our obtaining through our protectorate "over the Mosquitos, either directly or indirectly any exclusive advantages "therein. Here is a basis for agreement. Let us settle matters upon this basis "and avoid any mention of that on which as no agreement can be found no settle-"ment can be come to."

[1] Of November 8, 1849, quoted above.

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You seemed to concur with me in this, but as the matter was already in the hands of Mr Lawrence and Lord Palmerston, it was deemed best to leave it there. Subsequently the Congress here became pressing for papers upon the question, and the intelligence arrived that Mr Lawrence had been taken seriously ill; It was then that you said that as the affair did not admit of indefinite delay, and that it was necessary if the President did not immediately lay Mr. Hise's and Mr Squier's Treaties before Congress he should have some strong motive for withholding them; and after some conversation it was agreed between us that such a motive should be given, by our adjusting and terminating the question here in such a manner as would be likely to be satisfactory to the two Governments, so that with this prospect of the termination of the affair, you should be able to delay the presentation of any Treaties to Congress till you could present them making them tally and correspond each with the other.

In conformity with this plan which struck me also as perfectly reasonable and expedient, I entered into the project of a Treaty with you, which proceeded wholly upon the principle that the great matter of the Canal was to be settled, and that any differences on the Nicaragua and Mosquito business were not to be touched upon. On this last understanding I begged you to draw up yourself in the strongest terms you could devise, an article excluding Great Britain from any advantages which her position with respect to the Mosquitos might otherwise afford; and to an article of this kind, as drawn up by you I at once subscribed. I told you at the time that I had no special authority for the engagement I was entering into; but that I was so well acquainted with the views of my Government, that I was quite sure it would agree to what I had agreed to.

This being done the President did refuse to give to Congress at that time the Papers respecting the Nicaraguan question, waiting, as I presumed, for the result of previous negotiation with Great Britain. About a week however subsequently to our project having been sent to England you informed me that some members of your Cabinet were not satisfied with it, deeming that Great Britain might be able to do, in some way covertly under her protectorate what she had stated she would not do openly.

I transmitted these views to my Government, and I certainly understood from you (though I might have been under some error) that the matter should remain in abeyance until Lord Palmerston's reply arrived—and I can assure you I learnt with very great surprise the day previous to my calling upon you with the information of the permission to conclude the Treaty we had drawn up together, which I had received from Lord Palmerston, that Mr Squier's Treaty had been presented to Congress. I think you will remember that when I expressed this to you, you stated that you had presented Mr Squier's Treaty because you had conceived that our project would not be agreed to by my Government, and that my Government would not give the assurance which Lord Palmerston had recently instructed me to give; and moreover that Lord Palmerston's letter to Mr Lawrence on the subject of Tigre Island had created a very disagreable impression on the mind of the President, and you then added "but Mr Squier's Treaty is not yet beyond my reach, and I can have the altera-"tions made in it that are necessary". Consequently after a meeting of your Cabinet you brought out to me Mr Squier's Treaty and discussed with me it's contents with a view to alteration. I also understand that when Mr Lawrence informed Lord Palmerston of Mr Squier's Treaty he did so, not with the statement that it was to remain unaltered, but with the assurance that such alterations would be made in it as comported with the friendly relations between Great Britain and the United States, and this more especially if the main question that of a ship communication between the Pacific and Atlantic was settled by an arrangement between Great Britain and the United States.

If there is any truth in the foregoing narrative, and I have endeavoured to make it as accurate as possible, you will perceive that I have acted all along upon the supposition that we were to settle the question of the Canal without stirring up the question of Nicaragua and Mosquito, and that if we made an arrangement together which shewed to the fullest extent our friendly disposition towards the United States, the Government of the United States would not show a hostile disposition to us in any negotiation with Nicaragua. Nay by the last Packet I wrote to Lord Palmerston asking at your suggestion to make a Treaty for Great

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Britain with the Nicaragua Agent here, on a basis similar to that of one to be made by the United States, so that I could not possibly think that there would be anything radically abhorrent in your Treaty with Nicaragua to the policy of Great Britain; and I certainly never dreamt until I received your note last Sunday Evening,[1] that at the very moment when we had got through our arrangement with the understanding that the settlement of the Canal should not arouse the question of the Mosquito title, but as it were practically dissolve the necessity of discussing this title between us, you would at the very last bring up this matter by a positive declaration that you not only disputed the claim we had affirmed, but were actually on the point of concluding a treaty with the Nicaraguans asserting and recognizing their claim in opposition. You say that we could agree to this disagreement, but people do not like to agree to be publicly called liars and robbers. It is impossible that such a declaration, which we have not only not provoked, and had no reason to expect, but have done everything we possibly could to prevent, should not wear a most unfriendly character; and I ask what would have been your feelings if Russia had recognised our claim in Oregon, if we had recognised the Mexican claim in Texas?

I can hardly disguise from you that such a declaration on your part might very possibly be deemed the cause for an increase in our naval armaments, and would dash bitterness and disappointment into the cup of good fellowship which we have been concocting. If you think it absolutely necessary to state civilly and quietly that it is not understood by you in our Treaty that you recognise thereby the title of the Mosquitos I shall not on that ground refuse to sign our Treaty; and if instead of stating in your Treaty with Nicaragua that you recognise the claim of Nicaragua over the Mosquito Territory, you state that you will do your utmost to obtain by good offices for her a satisfactory settlement of the differences which have arisen between her and Great Britain with respect to the said territory, I do not think that under existing circumstances this would be greatly objectionable, even if it were not agreable.

Now let me see whether with these modifications, which will allow our business to proceed, any party will be the worse. The relations between Great Britain and the United States would evidently be better—: the position of the Canal Company would be ten thousand times better, because I defy it to make the arrangement you spoke of the other day with English Capitalists, or to get any English Capital whatsoever to assist it, if you declare that you recognise a title in Nicaragua over territory to which Great Britain gives a title to the Mosquitos, and through which a canal is to pass. If you wish to get money for this enterprise you must allow that question to be dormant, as our treaty has made it. And now as to Nicaragua. What do you do for her? You make a declaration which you say you do not mean to follow up, in favor of her claim. This is sufficient to arouse a feeling of national honour on our part as to yielding in any way or even treating upon the subject, while it is not sufficient to get Nicaragua anything without our yielding or treating: whereas if you avoid anything which is hostile to us in your Treaty with the Nicaraguans, you lay a ground for amicable proceedings and conferences which opens the way to some friendly and satisfactory result. If you tell me in answer to this that Congress will be ready to sacrifice all these practical objects for the mere sake of doing something unfriendly and disagreable to England, you will tell me something that will surprise and afflict me very much, and make me feel that no endeavours of mine or yours can by possibility effect that friendly state of relationship between our two Countries which on the contrary it appears to me that our mutual sympathies and interests invite. I have only to add My dear Sir to this long letter that I will call upon you either this afternoon or tomorrow morning, and that whatever be the result of this negotiation it will always give me great pleasure to have acquired therein your friendship and esteem, sentiments which I sincerely and warmly reciprocate.

No later relevant correspondence prior to the signature of the treaty appears (immediately thereafter, April 19 to 23, discussion of

[1] April 7.

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alterations in the Squier-Zepeda Treaty was resumed; see 9 Clayton Papers, 1638–39, 1652–55, 1658–60, 1662–63). The proposed American note was abandoned; and in lieu of the declaration or note on behalf of the British Government which had been in contemplation, there was substituted a mutual pledge, written into Article 1 of the treaty in these words:

nor will either [Government] make use of any protection which either affords or may afford, or any alliance which either has or may have, to or with any State or People for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito Coast or any part of Central America, or of assuming or exercising dominion over the same

The result was a wording of Article 1, the most important and later the most controversial article of the treaty, so complex as to evoke Cobden's criticism of "the unfortunate propensity of diplomatists to involve their sentences in phraseology which becomes unintelligible not only to others but to themselves" (quoted by Hickson in Cambridge Historical Journal, III, 298); and it is worth while to read the article in what was deemed a "verbatim" rendering into French (Squier, Question anglo-américaine: Documents officiels échangés entre les États-Unis et l'Angleterre au sujet de l'Amérique Centrale, 6–7). But clarity and precision were of necessity left to one side, for with them there would have been no treaty; it was essential that the Plenipotentiaries should adopt phrases in which each of them could find his own satisfactory meaning; Clayton believed (May 7, 1850) that by the treaty the Mosquito protectorate "will be reduced to a shadow", while Bulwer was writing to London (April 28, 1850) that "nothing in the present Convention is affirmed thereupon, but nothing is abandoned" (see Williams, *op. cit.*, 107–8). In later discussions of textual construction, neither Government was at all times wholly consistent; and different officials of the same Government had different views (see Hickson, *op. cit.*, 299–300).

With the various changes made from the project and the addition of Article 9 and the final clauses, the treaty in its definitive form was signed on April 19, 1850; and on the date of signature these notes were written (respectively from D.S., 7 Notes to the British Legation, 238–40, and 27 Notes from the British Legation):

[*Mr. Clayton to Sir Henry Bulwer*]

DEPARTMENT OF STATE,
Washington, 19th April, 1850.

Rt Honble Sir H. L. BULWER,
&c, &c, &c

SIR: I have now the honor to submit to you, in a shape in which I am authorized by the President to sign the same, the project of the Convention which originated in our mutual conferences and consultations, shortly after your arrival in this country.

I presume, from the information you recently gave me as to the instructions you had received from Her Britannic Majesty's Government, that you are duly authorized, and will be ready to concur in the said Convention; in which case, a time can be at once fixed for our common signature.

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I have further to observe that at a period when, in consequence of circumstances, not now necessary to be stated, it was supposed that no such arrangement would be entered into between our respective countries as that we are now about to conclude, the treaty negotiated by this Government with the State of Nicaragua on the 3d day of September last, (a copy of which, so far as it relates to the proposed ship canal, was transmitted by Mr. Lawrence to Lord Palmerston, on the 22d day of November last,) was submitted to the Senate for advice in regard to its ratification.

This treaty is now in the possession of the Senators who, as the President's constitutional advisers in the exercise of the treaty making power, form a coördinate branch of the Government; and, as no treaty can be made without their advice and consent, that which you and I have originated, must be submitted to them in connection with the treaty above referred to. Whatever the Senate may decide in reference to either of these treaties, the President will not, I am persuaded, have occasion to controvert. He does not doubt, should the Senate confirm the treaty with Great Britain, that it will take care that any other treaty also confirmed by it, shall be in conformity therewith; and it is unnecessary for me to say that nothing in one of these treaties could be ratified which would be inconsistent with the spirit and intention of the stipulations contained in the other.

The friendly relations between the two greatest commercial nations of the world will, I trust, be strengthened by this new bond of union between them: and I anticipate the happiest results from their honorable and peaceful alliance for the purpose of diffusing the blessings of commerce and civilization.

It is exceedingly gratifying to me that a new treaty, likely to be so important in its results, should have been the consequence of our friendly intercourse; and I cannot terminate this negotiation without those mutual congratulations which the occasion warrants, and the sincere expression of that esteem and regard which has been created by the assistance you have given me in bringing our labors to a happy conclusion.

Accept the assurance of the high consideration with which I have the honor to be your most respectful and obedient servant,

JOHN M. CLAYTON.

[*Sir Henry Bulwer to Mr. Clayton*]

BRITISH LEGATION *April 19th 1850.*

SIR, I have had the honour of receiving your communication of 19th instant, inclosing the project of a Convention between the two Governments of Great Britain and the United States which originated in our mutual conferences and consultations shortly after my arrival in this Country and which you now state to be in such a shape as enables you to sign the same with the full approbation of the President.

I need not observe, after reading through the project in question as now transmitted to me, that I have to remark therein some slight deviations from the original text of the project which I submitted to Viscount Palmerston's approval; but as it is important that in the present situation of this affair no further time should be lost in bringing it to a conclusion, and as the alterations I thus allude to are either merely verbal or in accordance with the general spirit of my instructions,[1] and have been adopted by us conjointly for various reasons which have appeared expedient for the furtherance of those objects, which our treaty specifies, I am prepared to sign the said treaty on behalf of Her Britannick Majesty, and will do so at such time as you may appoint for that purpose.

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[1] As first written, this phrase read "or come within the scope of my general instructions". Bulwer requested the change to be made on April 21 (see 9 Clayton Papers, 1656–57). In the original note, the words "in accordance with the general spirit of" are written in ink above the line, over the words "come within the scope of", which are scored in pencil; and to the words above the line is this marginal pencil annotation, in the handwriting of Clayton: "The interlineation here is made in pursuance of Sir Henry's request in his private note received by me Sunday April 21st 5 o'clock PM 1850."

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In regard to the other portions of your communication I might perhaps be justified in expressing some regret that any treaty connected with the subject engaging our attention should have occupied the consideration of the Senate, before the Convention we are about to sign had been submitted to it. But such is my profound conviction of the great judgment and ability which illustrate the distinguished body before which these Treaties will be brought, as well as my confidence in the superintending wisdom of the President in whom resides the power of ratification that I do not in the least fear but that the Convention which we sign will receive every due consideration, and that if it should be finally approved of by the one and ratified by the other, nothing will be approved of or ratified in any other Treaty contrary to the spirit and intentions manifest in our engagements.

Permit me to add that I entirely sympathize with you in the belief that the bonds of friendship which unite our two great and kindred nations will be honourably strengthened by a Convention which has for its object the construction and protection of a great work which we intend should confer equal benefits on all the nations of the earth. Indeed the whole Treaty which we are now about to conclude manifests a spirit of conciliation and peace, of generous and unselfish zeal for the universal interests of Commerce and civilization that will I am persuaded do credit to our respective Countries and afford no unworthy example to the world.

It is I can assure you a subject of sincere gratification to me that in negotiating a measure which so completely represents the views of Her Majesty's Government, I had the great advantage of being associated with you, and although I claim but a small share in the merit of bringing this important business to a happy termination I shall always remember with pride and pleasure the negotiation in which we have been engaged together, were it only on account of the expressions of esteem and regard with which you honour me, and which faithfully represent the sentiments of sincere friendship and high consideration which I avail myself of this opportunity to offer to you.

H. L. BULWER

Honourable J. M. CLAYTON
&c &c &c

The British Plenipotentiary subsequently (September 27, 1850) wrote to Secretary of State Webster that he did not consent to sign the treaty "until Mr Clayton assured me in writing and with reference to Mr Squier's treaty, that the President would not ratify any other treaty, of which the spirit and intentions were contrary to that which we were signing" (D.S., 27 Notes from the British Legation; Blue Book, 1856, 70; Manning, *op. cit.*, VII, 411–12).

Clayton wrote at some length to Lawrence on the conclusion of the negotiation; he said that under the treaty Great Britain could neither occupy to protect, nor protect to occupy; and of the Mosquito protectorate, *stat nominis umbra*, "it stands the shadow of a name"; Lawrence was told to use all his "good offices to persuade Lord Palmerston to agree to the treaty"; but to Lawrence was given no copy of the instrument, seemingly on the strange ground that it was before the Senate (9 Clayton Papers, 1661, 1681–88, Clayton to Lawrence, April 22 and May 2, 1850).

The approval by the British Government of the treaty as signed and specifically of the changes made from the project of February 3, 1850, was given in instructions of May 24 and May 28 (Blue Book, 1856, 57–59). The declaration of June 29, 1850, regarding British Honduras (printed above under the heading "The Exchange of Ratifications"), was made pursuant to later directions (see *ibid.*, 59–60, the instructions of June 8 and June 14, 1850, the former

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enclosing a draft of the declaration and the latter the Queen's ratification of the treaty).

During the interval between the signature of the treaty and the exchange of ratifications, news came of another incident in Central America; it was learned from the press in the early days of May, and later by a despatch (D.S., 2 Despatches, Guatemala, No. 32, May 7, 1850) which was received on June 17, that Squier had caused the American flag to be raised on Tigre Island about the first of April; but the proceedings of the treaty were by this time too far advanced for such an episode to do more than cause annoyance. An instruction was written to Squier on June 19 wherein it was said that the taking possession of Tigre Island had been disapproved (D.S., 15 Instructions, American States, 108–9; see Blue Book, 1856, 59, 61; the cited despatch from Squier and instruction to him are in Manning, *op. cit.*, III, 529–31, 63); but that instruction did not reach Squier at his post, for when it was written he was about to leave for the United States; and notwithstanding the disapproval of the Legislature of Honduras of the proposed cession of Tigre Island to the United States by the protocol of September 28, 1849, the American flag which had been there hoisted remained displayed for some months longer (Blue Book, 1856, 94–95).

The Correspondence Regarding Roatan

In April 1850 there were oral and written communications between the Plenipotentiaries on the subject of the Bay Islands; no record of these is to be found in the archives of the Department of State.

Under date of March 14, the following instruction was written to Bulwer (F.O. 115:106, No. 25):

> I enclose for your information an Extract of a Letter which has been received at the Admiralty from Commodore Bennett by which it appears that some Americans are about to establish themselves in the Island of Ruatan.
>
> I have to state for your guidance that the Island of Ruatan and also the Island called Bonaca are not only British de Jure but are actually occupied by British Settlers who are governed by a British Magistrate appointed by the Superintendant at Belize.
>
> I have also to inform you that a Central American Flag which was found flying at Ruatan in 1839 was in that year forcibly removed by the Commander of Her Majestys Ship "Rover" under the orders of Her Majesty's Government, since which time no attempt has been made on the part of any of the Central American States to rehoist their Flag there; and I have to add that in 1841 the Governor of Jamaica was informed that if any other Power should take Possession of Ruatan he was to make a demand for the Removal of the Intruders, and if that demand should fail he was authorized to resort to forcible means for their Ejectment without referring home for further Instructions.

The enclosure to the foregoing instruction was this excerpt from a letter addressed to the Secretary of the Admiralty dated "Imaum" at Port Royal, January 21, 1850 (*ibid.*):

> I have not had any information of the proceedings of the American Squadron under Commodore Parker, not any Vessel having arrived here from Havanna since; but the "Helena" will sail tomorrow for Grey Town, to watch their Motions, and as soon as the Bermuda arrives (and she has been expected some days since) I shall despatch her to the Island of Ruatan, where, Report says, the Americans intend to fix their Head Quarters.

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Pursuant to that instruction, Bulwer wrote this note to Clayton on April 15 (F.O. 5:512, No. 63, April 16, 1850, enclosure):

Her Majesty's Government have been informed that there is an intention on the part of some Americans to establish themselves in the Island of Ruatan which together with the Island of Bonaca is a British possession and occupied by British Settlers, governed by a British Magistrate appointed by the Superintendent at Belize. As these Islands are under the protection of H.M's Forces in those parts, and the Govt of Jamaica was informed in 1841 that he was authorised to remove all intruders from the said Islands without referring home for further orders, should any Persons attempt to locate themselves therein, & resist his request for their withdrawal, I deem it advisable to report to you at once the intelligence which H.M. Govt has received knowing that you will take all the steps in your power to prevent the aggression of wh H.M's Govt has been informed should there be any truth whatsoever in the report to which I now do myself the honour to draw your friendly attention.

The foregoing note was withdrawn; Bulwer thus reported on the circumstances in his private and confidential despatch of April 27 (*ibid.*):

I transmitted to Your Lordship the copy of a letter written by me to Mr Clayton with respect to Ruatan and Bonaca. Mr Clayton called on me and stated that he wished me not to write him an official note upon this subject now, since he should have to send the note to Congress, and some persons there would very possibly imagine that Great Britain was at this moment laying claim to new Territories in America; a belief which however erroneous would affect the passing of our Treaty at present before the Senate. He added that the rumours we had heard were he believed altogether erroneous, and that he would write me a letter thereupon. Under these circumstances I consented to take back my note and received the inclosed communication which I trust Your Lordship will deem satisfactory, permitting my despatch No. 63 and its enclosure to be cancelled.

A copy of the letter of Clayton mentioned in the despatch just quoted is an enclosure thereto. Bulwer had written to Clayton: "Just send me at your leisure three lines—saying—'I can inform you that there is no question of Americans from the U.S. attempting to make a settlement in Ruatan or Bonaca'" (9 Clayton Papers, 1674–75, undated). The text of the letter of Clayton follows:

DEPARTMENT OF STATE
Washington April 24, 1850

MY DEAR SIR In a recent conversation between us, you informed me that you had received information from your Government, that some Americans were about to establish themselves in the Islands of Ruatan and Bonaca; and you desired to know of me whether the information were true. I think it is my duty to inform you promptly that this Government has never desired to occupy, fortify or settle either of those Islands; that I have no knowledge or information or belief that Americans desire to establish themselves in those Islands. If they do so, they have no countenance from their own Government and I imagine the whole story has its origin in rumours which constantly annoy me, arising out of the collection of large numbers of my countrymen at various places on their way to California. The Spaniards are, in the same way kept in constant agitation about Cuba, and the Mexicans about the Provinces of the Sierra Madre.

The Americans have elbow-room enough for the present; and will be very quiet as long as they can earn, as they do now, an ounce a day in California.

I am my dear Sir &c

(Signed) JOHN M. CLAYTON.

Right Honble Sir H. L. BULWER &c

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A rather vague and incomplete, and also erroneous, account of this correspondence was put forward in the Senate some years later by Senator John J. Crittenden, of Kentucky (Congressional Globe, XXV, pt. 1, 469–70, February 20, 1856).

The Project and the Treaty

For the most part, the wording of the signed project of February 3, 1850, in preamble and eight articles, was carried into the Clayton-Bulwer Treaty; no copy of the project has been found in the archives of the Department of State; the following text of that basic draft is from the signed example in 9 Clayton Papers, 1640–49:

Convention between the United States of America and Her Britannic Majesty.

The United States of America and Her Britannic Majesty being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a Convention their views and intentions with reference to any means of communication by Ship Canal which may be constructed between the Atlantic and Pacific Oceans, by the way of the river San Juan de Nicaragua and either (or both) of the lakes of Nicaragua or Managua, to any Port or place on the Pacific Ocean, the President of the United States has conferred full powers on John M. Clayton Secretary of State of the United States, and Her Britannic Majesty on the Right Honourable Sir Henry Lytton Bulwer Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States, for the aforesaid purposes, and the said Plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles:—

Article 1. The Governments of Great Britain and the United States hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship Canal, agreeing that neither will ever erect or maintain any Fortifications commanding the same, or in the vicinity thereof, or occupy or colonize either Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America, nor will Great Britain or the United States assume or exercise any dominion over the same, or take advantage of any intimacy, or use any alliance, connection or influence that either may possess with any State or People through or by whose Territory the said Canal may pass, for the purpose of acquiring or holding directly or indirectly, for the subjects or citizens of the one, any rights or advantages in regard to commerce or navigation through the said Canal, which shall not be offered, on the same terms, to the subjects or citizens of the other.

Article 2. Vessels of Great Britain or the United States traversing the said Canal, shall in case of war between the contracting parties be exempted from detention or capture by either of the belligerents, and this provision shall extend to such a distance from the two ends of the said Canal as it may hereafter be found expedient to establish.

Article 3. In order to secure the construction of the said Canal, the contracting parties engage that if any such Canal shall be undertaken upon fair and equitable terms by any parties having the authority of the local Government or Governments through whose territory the same may pass, then the persons employed in making the said Canal and their property used or to be used for that object, shall be protected from the commencement of said canal to its completion by the Governments of the United States and Great Britain, from unjust detention, confiscation, seizure, or any violence whatever.

Article 4. The contracting parties will use whatever influence they respectively exercise with any State or States, or with any people possessing, or claiming to possess any jurisdiction or right over the territory which the said Canal shall traverse, or which shall be near the waters applicable thereto, in order to induce

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such states or people to facilitate its construction by every means in their power; and furthermore Great Britain and the United States agree to use their good offices whereever or however it may be most expedient, in order to procure the establishment of two free Ports, one at each end of the said Canal.

ARTICLE 5. The contracting parties further engage that when any such Canal shall have been completed, they will protect it from interruption, seizure, or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said Canal may for ever be open and free, and the capital invested therein secure. Nevertheless the Governments of the United States and Great Britain in according their protection to the construction of the Canal which this Treaty specifies, and guaranteeing its neutrality and security when completed, always understand that this protection and guarantee are granted conditionally, and may be withdrawn by both Governments or either Government, if both Governments or either Government should deem that the persons or Company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this convention; either by making unfair discriminations in favour of the commerce of one of the contracting parties over the commerce of the other, or by inflicting oppressive exactions and unreasonable tolls upon passengers, ships or merchandize. But neither party however shall withdraw the aforesaid protection & guarantee without first giving six months notice to the other.

ARTICLE 6. The contracting parties in this convention engage to invite every nation state or people with whom both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other, to the end that the whole world may share in the honour and advantage of having contributed to a work of such general interest and importance. And the contracting parties likewise agree that each shall enter into treaty stipulations with such of the Central American nations states or people as they may deem advisable for the purpose of more effectually carrying out the great design of this convention, namely that of constructing and maintaining the proposed ship communication between the two Oceans for the benefit of mankind on equal terms to all and of protecting the same; and they also agree that the good offices of either shall be employed when requested by the other in aiding and assisting the negociation of such treaty stipulations.

ARTICLE 7th.

It being desirable that no time should be unnecessarily lost in commencing the great undertaking herein contemplated, the Government of the United States and Great Britain determine to give their support and encouragement to such persons or company as may first offer to commence the same, with the necessary capital, the consent of the local authorities and on such principles as accord with the spirit and intention of this convention.

ARTICLE 8.

The Governments of the United States and Great Britain, in entering into the present convention have not only desired to accomplish a particular object, but also to establish a general principle. They therefore hereby agree to take under their consideration any project for a canal or railway which may be submitted to them, and which may have for its purpose to connect the Atlantic and Pacific, or to shorten and expedite the transit of persons, ships or merchandise between the two great oceans, and should either of the two Governments deem it to be beneficial to the general interests of commerce and civilization to extend its support encouragement or protection to such railway or canal, it will forthwith invite the other of the two Governments to be a joint party in affording such protection support or encouragement; and will neither request nor accept from any persons, company or state, any advantages or privileges for its own citizens or subjects with respect to such railway or canal which shall not be open for all other Governments to obtain for their citizens or subjects upon the same terms as those which are proposed to or accepted by itself.

J. M. CLAYTON
H L BULWER

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Some light is thrown on the drafting of the project by the following private and confidential letter of Clayton to Bulwer, written on the day the project was signed, Sunday, February 3, 1850, at 4:30 p.m. (8 Clayton Papers, 1474–75):

I have inserted in pencil a few words in the draft on the 4th page "or assume or exercise any dominion over the same". See Lord Palmerston's despatch to Mr L. He disclaims expressly any British dominion. We will do the same. Keep the words.

I fear you are wrong in refusing to deny other nations the right of navigation if they do not enter into our guarantees of protection &c. I do not think it fair that Great Britain & the U.S. should assume all the responsibility & let others share the benefits without incurring the same obligations. If we have erred in this, remember it is in deference to you. You think the object is effected without inserting it in the treaty between us. That may be—but I would have preferred to speak plainly to other nations as we have to one another.

I have not had an opportunity of submitting the draft to the President or any other member of his Cabinet. But I have faith that we have in the main done right as we designed nothing but right.

If your Government does not approve what we have done, I must go to Congress. Pressed as I am now, I must have relief within 40 days or give way to the pressure. Before we can hear from England, the President will be compelled to submit Squier's treaty (not Hise's) to the Senate. That may be modified in that body. But without a treaty binding Nicaragua, all our efforts would be fruitless.

. . . . . .

P.S. If the draft is disapproved by G.B. it is understood between us that it never was made or thought of.

There is also an answer to the foregoing letter, of even date therewith (*ibid.*, 1472), which Bulwer sent by a gentleman of his Legation and in which he enclosed "the draft as amended according to your desire" and wrote thus: "I have added an article (article 7) at Mr White's desire, &, as I understood him, at yours—it can stand or not as you desire. I will call at any hour you suggest by bearer. . . . Finis coronat opus!!!"

A comparison of the articles of the two papers, the project and the treaty, shows that changes of importance were made in Article 1 and also in Article 8, which was recast and made more definite; there were added clauses to Articles 6 and 7; and the word "blockade" was inserted in Article 2 to go with "detention or capture"; otherwise the two papers are in all essentials the same. Bulwer commented on the differences in two despatches of April 28, 1850 (F.O. 5 : 512, Nos. 66 and 67, each printed in part in Blue Book, 1856, 52–56); the text of the latter of those despatches, the more important here, follows:

In my despatch of this day I have informed Your Lordship of my having concluded a Treaty with Mr Clayton respecting the construction of a Ship communication between the two Oceans of the Atlantic and Pacific; And I have there stated to Your Lordship that there are some slight differences between the original project transmitted home on the 3rd of February and the Treaty now concluded.

I have thought it better to explain the nature of these changes and my reasons for adopting them in a separate despatch; and I shall do so rather according to the manner and time in which they were made, than according to the place in the Convention in which they occur.

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The first therefore I shall refer to is in Article VI to which are added the words "and should any differences arise as to right or property over the territory through which the said Canal shall pass between the States or Governments of Central America, and such differences should in "any way impede or obstruct the execution of the said Canal, the Governments of Great Britain and the United States will use their good offices to settle such differences in the manner best suited to promote the interests of the said Canal, and to strengthen the bonds of friendship and alliance which exist between the Contracting Parties".

This addition in reconsidering the matter was deemed both by myself and Mr Clayton an advantage to the Treaty, and a sort of guarantee against future unfriendly disputes between the two Governments as to the subject referred to.

The second addition agreed to is in Article VII, to which has been added "and if any Persons or Company should already have, with any State through which the proposed Ship Canal may pass, a contract for the construction of such a Canal as that specified in this Convention; to the Stipulations of which Contract neither of the Contracting Parties in this Convention have any just cause to object, and the said Persons or Company shall moreover have made preparations and expended time, money, and trouble on the faith of such Contract, it is hereby agreed that such Persons or Company shall have a priority of claim over every other person, persons, or Company, to the protection of the Governments of Great Britain and the United States, and be allowed a year from the date of the exchange of the Ratifications of this Convention, for concluding their arrangements, and presenting evidence of sufficient Capital subscribed to accomplish the contemplated undertaking, it being understood that if, at the expiration of the aforesaid period such persons or Company be not able to commence and carry out the proposed enterprise, then the Government of Great Britain and the United States shall be free to afford their protection to any other persons or company that shall be prepared to commence and proceed with the construction of the Canal in question"

I should here state to Your Lordship that when the Treaty was placed under the notice of the Chairman [1] of the Committee on Foreign Relations in the Senate, a Gentleman of great weight and of the more importance since he belongs to the dominant [2] party in the Chamber of which he is a member, he considered that it would only be fair that the two Governments should give an open and avowed preference by name to an American Company which had first conceived and taken steps to carry out the proposed undertaking. This I objected to: but I deemed there could be no objection to giving to any Company, under certain fair conditions such as are specified, the preference that was sought, although those conditions applied to a Company that was American. In this manner a sort of compromise was effected.

The third alteration adopted is in Article VIII, the whole of which Article is remodelled.

This alteration I must say was the effect of the joint opinion of Mr Clayton and myself both thinking that the Article as amended was better and more clear,— referring especially to two lines of communication which seem the most likely to be adopted; and securing thereby a considerable support to the Convention in general, many persons being interested in the Panamà and Tehuantepec projects.

The only other change which it is worth while remarking upon occurs the first in the body of the Treaty, but was the last mooted or adopted. Your Lordship will perceive it by casting your eye over Article I in which a passage is inserted between the words "Central America" which close the second line in the page [3] down to "nor will Great Britain or the United States take advantage of any" &c which occurs in the 3rd line from the bottom of the said page, some few words having been left out to admit of the aforesaid passage. The manner in which this change was effected was as follows:

[1] William Rufus King, of Alabama.

[2] I.e., the Democratic Party.

[3] That is, the page of the manuscript sent to the Foreign Office; the inserted passage referred to is that between the second and third semicolons of Article 1 as printed following the headnote.

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Mr Clayton and the Senator who had been consulted having agreed to the Treaty as finally arranged with the three alterations or additions previously mentioned in Articles VI, VII and VIII, Mr Clayton was willing to sign the same; but stated to me that on receiving the declaration which Your Lordship had instructed me [1] to make when the Treaty was concluded, and of which I of course had previously informed him that since that declaration mentioned Her Majesty's Protectorate over Mosquito, he should be obliged to make a declaration on the part of the United States Government that it in no wise recognised the Mosquito title or Sovereignty.

It seemed to me very undesirable that after we had made a general arrangement so friendly in its character, that there should occur just at the end of it, and in answer to an amicable note on our part anything like a note which would not wear a perfectly friendly character on the part of this Government.

The whole affair had been conducted on the principle of escaping from the mention of a difference on which we could not give way ourselves, nor yet insist upon the United States Government giving way. The difference to be sure had only become one of mere opinion, but still its declaration seemed to me, especially as appended to our Convention to be deprecated and if possible avoided.

It also struck me that the declaration in question as conceived in the note [2] bound our Government as to its protection over the Mosquitos, but did not bind the United States Government as to its protection over New Granada, or such other States—even Nicaragua—as it might hereafter form an especial alliance with. Moreover the pledge that we would not do covertly what we had declared we would not do directly seemed to me a pledge that it would be more suitable and becoming that both parties should take than that one alone should take.

Under such impressions I referred to my correspondence with Your Lordship and perceived that the note you had authorised me to write had for its object the satisfaction of the United States Government, and that it had been elicited by my request to give some such satisfaction.

It seemed to me consequently that if I could satisfy the United States Government equally with respect to the use of our protectorate over Mosquito, without in any wise abandoning that protectorate, by making the declaration a general and mutual one, and that at the same time I could thus avoid any statement on either side of the remaining difference between the two Governments, I should do well.

With these views I refrained from presenting Your Lordship's note, and embodied in the Treaty the substance of the declaration given by Your Lordship to Mr Lawrence, constructing that declaration so as to apply to any Government or People we do or may protect, and also to any Government or People that the United States Government do or may protect. Some discussion took place on this matter, but finally it was so arranged.

As the case now stands it is clearly understood that Her Majesty's Government holds by its own opinions already expressed as to Mosquito, and that the United States does not depart from its opinions also already expressed as to the same subject, but the main question of the Canal being settled on an entirely amicable basis, and the future relations of the United States and Great Britain being regulated in all other parts of Central America the discussion of this difference which has lost its great practical importance is avoided in an arrangement meant to be as much as possible of a perfectly friendly character.

I need not say that should Your Lordship wish to make any further statement as to Her Majesty's Government's views with respect to the protectorate of the Mosquitos, that statement can still be made: nothing in the present Convention is affirmed thereupon, but nothing is abandoned.

I trust that after this statement Your Lordship will approve of the course I have pursued: the negociation has been a difficult one, and its results are to be appreciated not merely in direct reference to the object which our Treaty resolves, but in the indirect effects which the nature of the settlement will produce on all our relations with the United States.

[1] In the instruction of March 8, 1850 (Blue Book, 1856, 45).

[2] From Palmerston to Lawrence of November 13, 1849; printed above and also in Blue Book, 1856, 7–8.

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There are various small and verbal differences between the original project and Treaty which I have not enumerated, because they leave the general sense the same, and have only been adopted to express that sense more clearly. The word "fortify" is inserted between "occupy & colonise" in the second line from the bottom of the page in Article II; but this word had been used in Your Lordship's note to Mr Lawrence, and only imposes in that place an obligation which had already been agreed to and stated elsewhere. The word "blockade" is inserted before the words "detention or capture" in Article II, at the request of different influential persons, but only signifies what detention and capture had already expressed.

ARTICLE 6

In the presidential message submitting the Clayton-Bulwer Treaty to the Senate, it was said that there was "good reason to believe that France and Russia stand ready to accede to this treaty". With the Government of France there were communications both prior and subsequent to the date of the treaty; but those exchanges were few in number and limited to the principle (see D.S., 15 Instructions, France, 125–26, 129–30, 131, January 26, April 27, and May 26, 1850; 32 Despatches, France, No. 23, March 6, No. 24, March 7, No. 45, July 4, and No. 46, July 10, 1850, and enclosures to Nos. 23, 24, and 46); the earliest mention of the subject to Rives appears to have been in a letter of January 7, 1850 (see 8 Clayton Papers, 1433). Regarding communications with Russia, it seems that verbal instructions had been given to Neill S. Brown, who was appointed Minister to Russia on May 2, 1850, and who arrived at St. Petersburg on the following July 23; but very little in writing on the subject appears, and the paper of earliest date is a despatch of August 16, 1850 (D.S., 15 Despatches, Russia, No. 2); and in later despatches there is nothing worthy of remark (see *ibid.*, Nos. 3 and 5, September 18 and December 3, 1850).

SOME LATER TREATIES

That the Clayton-Bulwer Treaty required implementing by supplemental international acts of the parties and of third states was deemed at the time obvious. Two points were mentioned in the note (printed above) of Clayton of July 4, 1850, just prior to the exchange of ratifications; but that enumeration was partial only (see the memorandum enclosed with the private note of Bulwer of August 17, 1850, in D.S., 27 Notes from the British Legation; Manning, *op. cit.*, VII, 406–8).

During the Fillmore administration (July 10, 1850–March 4, 1853), there was no expressed conflict of opinion between the two Governments regarding the meaning of the treaty. The negotiations of that period [1] were at first carried on between Daniel Webster, Secretary of State (from July 22, 1850), and Sir Henry Lytton Bulwer, British Minister at Washington. The chief subjects of that negotiation were the boundary between Costa Rica and Nicaragua, the status of Greytown, the limits of Mosquito, the terms of treaties to be made with Nicaragua by the United States and Great Britain, respectively, and the fixing of the extent of the zone under Article 2 of the Clayton-Bulwer Treaty; perhaps the most important of the questions was

[1] As to which, see Williams, *op. cit.*, 110–38, and the writings there cited.

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that of Greytown, where possibilities of friction were illustrated by the *Prometheus* incident of November 21, 1851, when a steamer under the American flag was compelled by an act of violence of a British vessel of war to pay certain port dues (see Blue Book, 1856, 102–16; Manning, *op. cit.*, VII, 73–74, 444–49).

The result of conversations and discussions had between Webster and Bulwer from time to time (August 1850–July 1851) was that an accord in principle was reached on the subjects mentioned, other than the extent of the zone under Article 2; a "memoir" was drawn up by Bulwer, at the desire of Webster, "expressing the opinions to which a discussion of this matter had conjointly brought us"; the approximate date of that memoir is July 10, 1851; the signing of the memoir was at first contemplated, but Webster finally was disinclined to that course; the terms of the memoir are in substance those of the instruction to Bulwer of June 25, 1851, which was along lines suggested by Bulwer in his despatch of May 19 (see Blue Book, 1856, 96–98); and the memoir became the basis, in part, of the subsequent Webster-Crampton Agreement of April 30, 1852. The text of the memoir follows (D.S., 3 Drafts of Treaties, 75–80):

Such a Treaty has now been drawn up & has only to be signed: I should be willing to make a similar one with Nicaragua, if required.

1st—The United States Government to conclude with Nicaragua a simple Treaty of Commerce which should contain no stipulations, engagements, or declarations, as to the Territorial Rights or limits of Nicaragua.

2nd Great Britain to conclude with Nicaragua a Treaty to which the United States might or might not be a party, by which Great Britain on behalf of Mosquito would cede to Nicaragua Grey Town, and a definite district adjoining to it in consideration of the payment of a sum to be agreed upon, the amount of which should be stated in the Treaty, and it would be best that this should be a sum of money to be paid down at once.

3rd Nicaragua should engage not to molest in any way, but on the contrary to respect and protect, Mosquito, within the remaining territory left to the same—the inland boundary between those two States should be described in the Treaty.

4th The Southern bank of the St John should be acknowledged to belong to Costa Rica.

5th The disputed questions between Nicaragua and Costa Rica respecting Guanacaste on the Pacific should be settled favourably to Costa Rica.

N.B. This is here put in, altho' I always took it for granted—because I find Nicaragua wishes to shirk this point wh is the main feature in the Canal enterprize, & the Treaty of 19th April.

* This shd in the interest of all parties be as small as possible and certainly not more than 4 p Cent.

6th Grey Town should be a free bonding Port. The duties on exporting from thence into the interior should never exceed a small fixed amount say per cent,* and the Merchants, Goods, Vessels, and Trade of all the States of Central America, should have access to, and the use of, the Port, upon the same terms and conditions as the Merchants, Goods, Vessels, and Trade of Nicaragua.

N.B. Some expression in any arrangement must be inserted to this effect; vizt

That Nicaragua convinced of the justice and friendly feelings of Great Britain as set forth in the accompanying Document willingly withdraws any offensive expressions that have occurred in her correspondence with that Power, and which might prevent a perfect good understanding being established with the same.

The mere words of this passage may be arranged.

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ART: 7. The cession by Costa Rica of her claim to participate in all the Rights belonging to the joint sovereignty, w^h she asserts over the River San Juan & the lake, and her consequent abdication of all claim to a share in the advantages to be derived from the contract made by the State of Nicaragua with the Canal Company, it being always understood that such arrangement does not interfere with the Right of Costa Rica to navigate for herself the River San Juan with all vessels, excepting Steam Vessels during the period of 96 years for which the exclusive Right of Steam Navigation has been granted to a Company.

Thereupon a meeting took place (July 11, 1851) at which the Ministers at Washington of Costa Rica (Felipe Molina) and Nicaragua (José de Marcoleta) were present, representing their respective Governments; the proposal of Bulwer, as written in the foregoing memoir, was accepted on behalf of Costa Rica and declined by Nicaragua; a counterproposal of Nicaragua was refused by Bulwer as unacceptable; Marcoleta said he had not powers to go further (for Bulwer's report of that meeting and the counterproposal of Nicaragua, see Blue Book, 1856, 98–100; the Nicaraguan propositions are in Manning, *op. cit.*, IV, 215–17).

Soon thereafter Sir Henry Bulwer left Washington. Early in 1852 negotiations were resumed there with his successor as British Minister, John Fiennes Crampton; and the verbal accord which had been reached by Webster and Bulwer was extended and elaborated in a written agreement dated April 30, 1852, which is commonly known as the Webster-Crampton Agreement. Some changes of wording in the Webster-Crampton Agreement as signed were proposed by Crampton and, by May 13, 1852, accepted by Webster. These are stated in an instruction to John Bozman Kerr, Chargé d'Affaires to Nicaragua (D.S., 15 Instructions, American States, 136–37, May 13, 1852; Manning, *op. cit.*, IV, 25), and are indicated in the text printed below (see Blue Book, 1856, 147–50, 162–64;[1] papers of the discussions and projects leading up to the Webster-Crampton Agreement and relating to the temporary or provisional recognition accorded to the *de facto* authorities at Greytown are in *ibid.*, 123–26, 131–37, 150–59).

By Article 1 of the Webster-Crampton Agreement a definite region was reserved to the Mosquito Indians; this began at the mouth of the River Rama and extended north to the River "Segovia, Fantasma or Wanz" and west to the meridian of 84°30′; all territory claimed by the Mosquitos west or south of that region, including Greytown, was relinquished to Nicaragua; compensation was stipulated; and land grants made by the Mosquitos since January 1, 1848, and attended with residence or possession, were, in general, confirmed. By Article 2 voluntary incorporation of the Mosquito Indians with Nicaragua was made permissible, and the same article contained provisions regarding tonnage and other duties at Greytown; in Article 3 there was described a boundary between the Republics of

[1] Further changes were later desired by the British Government, as stated in the instruction of June 18, 1852 (Blue Book, 1856, 164–67). One of them was a modification of the land-grant clause of Article 1 so as expressly to exclude an extensive grant of land north of the Nicaraguan frontier made in 1820 by the "King" of the Mosquitos. The desired changes were acceptable to Webster (*ibid.*, 177–80; Manning, *op. cit.*, VII, 476–80).

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Nicaragua and Costa Rica, with clauses regarding navigation and canal privileges; Article 4 contained further clauses regarding the ship canal; Article 5 implemented the zone provision of Article 2 of the Clayton-Bulwer Treaty; in Articles 6 and 7 were clauses giving additional time to the American Atlantic and Pacific Ship Canal Company for the commencement of its operations and extending protection to an affiliated company known as the Accessory Transit Company. Finally, it was said that "these propositions so far as they respect the Governments of Nicaragua and Costa Rica are advisory and recommendatory" and would be communicated to them; and unless those two Governments concurred promptly in the general basis of the arrangement, then Great Britain and the United States "will immediately as between themselves jointly adopt such measures" as might be deemed advisable to carry into execution the Clayton-Bulwer Treaty and to accomplish the design of a canal.

In form, the Webster-Crampton Agreement was highly unusual. The preamble refers only to relations between Costa Rica and Nicaragua and between Nicaragua and the Mosquito Indians, and recommends an accommodation and settlement upon the basis of the articles following; to a considerable extent the seven articles of the agreement comprise provisions appropriate to the preamble; but Articles 5 and 6 and part of Article 7 are clauses of formal agreement between the United States and Great Britain, for in Article 6 mention is made of "the exchange of the ratifications of this Convention". In present-day terminology, the Webster-Crampton Agreement was in part an Executive agreement and in part a signed draft of a treaty; the procedure contemplated was that a treaty of the four powers would follow acceptance of the terms by the two Republics of Central America. The text of the Webster-Crampton Agreement, from the original in D.S., 3 Drafts of Treaties, 59–73, follows:

The Undersigned Daniel Webster Secretary of State of the United States and John F Crampton Envoy Extraordinary and Minister Plenipotentiary of Her Britannick Majesty having taken into consideration the state of the relations between the Republics of Costa Rica and Nicaragua in respect to the boundaries between those Republics and between the Republic of Nicaragua and the territory claimed by the Mosquito Indians and being mutually desirous that all pending differences respecting those questions should be amicably, honorably and definititively adjusted do in behalf of their respective Governments earnestly recommend to the respective Governments of the Republics of Nicaragua and Costa Rica an accomodation and settlement of these differences upon the following Basis

ARTICLE 1st

The Mosquito Indians may reserve to themselves out of the territory heretofore claimed or occupied by them on the Eastern Coast of Central America a district of country and the jurisdiction over the same to be bounded as follows namely beginning on the shore of the Caribbean Sea at the mouth of the River Rama which is (according to Bailey's map of Central America published in London November 1850) 11º 34m north latitude and 83º 46m West Longitude running thence due West to the meridian of 84º 30m west longitude from Greenwich thence due north on said meridian to the river Segovia Fantasma or Wanz thence down said river to the Caribbean Sea thence southerly along the shore of said sea to the place of beginning and all the rest and remainder of the territory and lands lying Southerly or Westerly of said reservation heretofore occupied or claimed

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by the said Mosquitos including Greytown they shall relinquish and cede to the Republic of Nicaragua together with all jurisdiction over the same in consideration of the nett receipts for a period of three years from all duties levied and collected at Greytown at the rate of ten per cent ad valorem on all goods imported into the state. The period of three years to commence on the day when Nicaragua shall formally take possession of and enter into the occupancy of said Town. And the said nett receipts shall be payable quarterly or every three months to such agent or agents as may be appointed to recieve them

And the said Republic of Nicaragua hereby agrees not in any way to molest or interfere with the Mosquito Indians within the territory herein reserved by them.

It is also understood that any Grants of land which may have been made by said Mosquitos since the first of January 1848 in that part of the Mosquito territory hereby ceded to Nicaragua *which grants shall have been attended with residence on or possession of the lands granted* shall not be disturbed provided the said Grants shall not interfere with [other legal grants made previously to that date by Spain, by the Central American Confederation or by Nicaragua or with] the privileges or operations of the Atlantic Ship Canal Company or Accessory Transit Company and shall not include territory desired by the Nicaraguan Govt for forts arsenals or other public buildings.[1]

ARTICLE II

It is also understood that nothing in the preceding article shall preclude the conclusion of such voluntary compact and arrangement between the state of Nicaragua and the Mosquito Indians by which the latter may be definitively incorporated and united with the state of Nicaragua, it being stipulated that in such case the said Mosquito Indians shall enjoy the same rights and be liable to the same duties as the other citizens of the said state of Nicaragua. The municipal and public authority in the town of Grey-Town shall be held and exercised by the Government of Nicaragua but said Government shall lay no duties of tonnage nor any duties of impost on goods imported into Greytown intended for transit across the isthmus or for consumption in any other state than that of Nicaragua except such tonnage duty as may be necessary for the preservation of the Port and Harbour and the erection and maintenance of necessary light houses and beacons. And no duty for this or similar purposes shall exceed say 12 cents per ton on each vessel

ARTICLE III

The boundary between the Republics of Nicaragua and Costa Rica shall begin on the South Bank of the Colorado at its confluence with the sea at high water mark on said river thence along said south bank also at high water mark to the confluence of the Colorado with the river San Juan thence at high water mark along the south Bank of the San Juan to its source in lake Nicaragua thence at high water mark along the south and West shore of that lake to the point nearest the mouth of the river La Flor thence by a direct line drawn from that point to the mouth of the said river in the Pacific Ocean. It is understood however that Costa Rica retains the right in common with Nicaragua to navigate said rivers and lake by sail vessels, barges or vessels towed but not by steam but this right is in no wise to interfere with the paramount right in Nicaragua or her grantees to appropriate the waters of said rivers and lake to a ship canal from Ocean to Ocean or from the Caribbean Sea to said lake. It is also understood that the Company entitled the American Atlantic and Pacific Ship Canal Company shall have the privilege of locating on the south bank of the St John river four of the eight stations or sections of land referred to in the 27th Article of the amended charter of said Company as ratified by the Government of Nicaragua on the 11th April 1850. If however the said Company should desire to locate more than the said four sections on the south side of the San Juan, the Governments of Nicaragua and Costa Rica will amicably agree in regard to the terms of such location[2]

[1] Subsequent to signature, it was agreed that the words bracketed in this paragraph should be stricken and that the italicized words should be inserted.

[2] Subsequent to signature, the clause following was agreed to as an addition.

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But it is understood that nothing in this Article contained shall prevent the Republic of Costa Rica from resuming its rights to navigate the said rivers and lake by steam vessels, when the Charters of the Atlantic and Pacific Ship Canal Company or Accessory Transit Company shall either have expired by their own limitation or shall have been legally forfeited.

ARTICLE IV

Neither the Government of Nicaragua nor the Government of Costa Rica shall be at liberty to erect or suffer to be erected any wharf wall embankment or other Structure, or to do or suffer to be done any act or thing whatever in the harbour of Greytown in any part of the Colorado or San Juan rivers or on the shore of Lake Nicaragua which shall obstruct the free operations of the ship canal or Transit company or hinder the passage of their boats in, along and through the said harbor of Greytown and rivers Colorado or San Juan. And if after a proper survey of the route for a Ship Canal between the two oceans it shall be found that it would be preferable for that canal to pass in part along the Southern Bank of the river San Juan or the Colorado river the Government of Costa Rica engages to grant any lands and to afford any facilities which may be necessary for the construction of the said Canal.

ARTICLE V

Whereas it is stipulated by the second article of the Convention between Great Britain and the United States of America concluded at Washington on the nineteenth day of April 1850 that vessels of the United States or Great Britain traversing the said Canal shall in case of War between the contracting parties be exempt from blockade detention or capture by either of the belligerants and that that provision should extend to such a distance from the two ends of the said Canal as might thereafter be found expedient to establish. Now for the purpose of establishing such distance within which the vessels of either of said nations shall be exempt from blockade, detention or capture by either of the belligerants, it is hereby declared that it shall extend to all waters within the distance of twenty five nautical miles from the termination of said Canal on the Pacific and on the Atlantic coasts.

ARTICLE VI

Whereas by the seventh article of the said Convention it was among other things stipulated that if any persons or company had already made with any State through which the proposed Ship Canal might pass "a contract for the construction of such a canal as that specified in said Convention to the stipulations of which contract neither of the contracting parties in that Convention had any just cause to object and the said persons or Company had moreover made preperations and expended time money and trouble on the faith of such contract it was thereby agreed that such persons or Company should have a priority of claim over every other person persons or company to the protection of the Governments of the United States and Great Britain and should be allowed a year from the date of the exchange of ratifications of that Convention for concluding their arrangements and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking it being understood that if at the expiration of the aforsaid period such persons or Company should not be able to commence and carry out the proposed enterprise then the Governments of the United States and Great Britain should be free to afford their protection to any other persons or Company that should be prepared to commence and proceed with the construction of the Canal in question, — And whereas at the time of the signature of the said Convention a company styled the American Atlantic and Pacific Ship Canal Company had with the Government of the Republic of Nicaragua a contract for constructing a Ship Canal between the said Oceans but for reasons deemed sufficient by the Govts of Great Britain and the United States have not hitherto been able to comply with the stipulation which gave them a claim to the protection of the said Governments and whereas no other Company has claimed such protection on the same con-

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ditions it is therefore agreed that the further time of one year from the exchange of the ratifications of this Convention shall be allowed the said Company to comply with the stipulation aforsaid.

ARTICLE VII

And whereas by another charter of the 11th April 1850 to the American Atlantic and Pacific Ship Canal Company the state of Nicaragua with a view to facilitate the construction of that Canal has authorised the said Company to seperate from their contract of the 22d of Sept 1849 the part relating to the navigation of the waters of Nicaragua by steam under the title of the Accessory Transit Company and whereas the said Accessory Transit Company has for some time past been in full and successful operation the Governments of Great Britain and of the United States hereby engage to extend their protection to the said Accessory Transit Company in the same manner and to the same extent as by the aforesaid Convention of the 19th April 1850 and by this Convention the said protection is extended to the Atlantic and Pacific Ship Canal Company but as the main object of the said Convention between Great Britain and the United States of America was to provide for an inter Oceanic Ship Canal between the Atlantic and Pacific and as that object is still deemed paramount to every other mode of transit the protection hereby extended to the Accessory Transit Company shall not be construed to interfere with the right to construct said Canal by the Company which has undertaken to construct the same or in case of their failure by any other person or Company which may be authorised to construct the same and every Grant and privilege conferred upon said Accessory Transit Company shall be subject to the paramount right and privilege of any other persons or Company to construct maintain and use such canal. Finally these propositions so far as they respect the Governments of Nicaragua and Costa Rica are advisory and recommendatory and the immediate attention of those Governments to their consideration is earnestly invoked. To insure a prompt decision Mr Wyke Consul General of Her Britannick Majesty clothed with full power for that purpose, Mr. Kerr Chargé d Affaires of the United States to Nicaragua and Mr R. M. Walsh, appointed Special Agent on the part of the United States to the Government of Costa Rica are authorised to communicate the arrangement proposed to those Governments respectively and unless the aforsaid Governments of Nicaragua and Costa Rica shall promptly and without unnecessary loss of time concur in the general Basis of this arrangement and adopt proper measures for carrying it into effect then the Governments of Great Britain and the United States will immediately as between themselves jointly adopt such measures as they shall deem advisable to carry into full execution the Convention between those Governments of 19th April 1850 and to accomplish the design therein contemplated of an inter-oceanic communication by Canal from the Atlantic to the Pacific Oceans by the way of the river San Juan and the lake Nicaragua.

DANl WEBSTER
JOHN. F. CRAMPTON

WASHINGTON, *30th April, 1852.*

The terms of the Webster-Crampton Agreement were deemed confidential; but they were published on July 1, 1852, following the refusal of the President to communicate them to the Senate (see the message of that date in Executive Journal, VIII, 411–12); and that publication had diplomatic repercussions (see Moore, Digest, IV, 497–99).

The Webster-Crampton Agreement was carried out only to the extent that its advisory clauses were duly communicated; the recommendations were assented to by the Government of Costa Rica but they were not acceptable to the Government of Nicaragua (see the passage on the subject in the last annual message of President Fillmore, December 6, 1852, Richardson, V, 166; for papers regarding the communication to and the decision of the two Central American Governments, see Blue Book, 1856, 160–61, 163–64, 167–69, 180–99;

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Manning, *op. cit.*, IV, 14–28, 37–39, 276–325). No arrangement of pending questions pursuant to those clauses was possible.

The death of Daniel Webster took place on October 24, 1852; his successor was Edward Everett, appointed November 6; a change of administration was near at hand; when the creation of the British Colony of the Bay Islands (by letters patent of March 20, 1852, followed by proclamations of July 17 and August 2, 1852) became known at Washington, there ensued an extended debate in the Senate on the Clayton-Bulwer Treaty during the session [1] which ended on March 3, 1853; and it was obvious that the views and policy of the incoming administration in respect of the Clayton-Bulwer Treaty would differ from those of their predecessors in office (see Williams, *op. cit.*, 139–48).

During the administration of President Pierce, when William L. Marcy became Secretary of State (March 7, 1853) and James Buchanan, Minister at London (April 11, 1853), there were three distinct but closely related questions arising under the Clayton-Bulwer Treaty, which became the subject of prolonged discussion between the United States and Great Britain; and in this period (1853–56) various complicating events occurred (see Williams, *op. cit.*, 168–95, 209–18). The making of unauthorized treaties in Central America had not come to an end; Solon Borland, who was Minister to the Central American Republics, signed a treaty [2] with Nicaragua on February 14, 1854; orders of an American naval officer caused Greytown to be destroyed by bombardment and fire on July 13, 1854; there were filibusterers, of whom William Walker was the most spectacular and the most successful; Walker, who was an American citizen, in his first expedition, begun in 1855, gained control of the

[1] This was the second session of the Thirty-second Congress; papers were requested by a resolution proposed by Senator Cass and adopted on December 30, 1852; see Congressional Globe, XXII, 174; the papers transmitted are in Senate Executive Document No. 12, 32d Congress, 2d session, serial 660; for the debate, see the volume of the Congressional Globe cited, especially pp. 237–38, 247–53, and 266–72. That debate was continued in the session of the Senate which held from March 4 to April 11, 1853; the debate of that session is in Congressional Globe, XXII, appendix, 246–90, *passim;* therein the session is very misleadingly and confusingly called the third session of the Thirty-second Congress; but it was *not* a session of Congress; it was a special session of the Senate; and it was held during the period of the Thirty-*third* Congress.

[2] The text is not available. Borland reported that in only a single article, Article 35, did it differ materially from the ordinary treaties of amity and commerce with other Republics of Central America; that article included a guaranty of "Nicaraguan neutrality and sovereignty" (D.S., 1 Despatches, Nicaragua, No. 13, February 22, 1854); but Borland's description of his treaty may have been inadequate (see D.S., 15 Instructions, American States, 228–30, October 23, 1854; the cited despatch is in Manning, *op. cit.*, IV, 385–86, and the instruction, in part, in *ibid.*, 63). With that instruction to the Minister Resident to Nicaragua, John H. Wheeler, the successor of Borland, the original of Borland's treaty was returned, and Wheeler was authorized to make a modified treaty. Accordingly, Wheeler signed a treaty on June 20, 1855 (D.S., Unperfected V2–A). That treaty was much shorter than Borland's treaty, as it was based on the treaty with Costa Rica of July 10, 1851 (Document 147; see Manning, *op. cit.*, IV, 470–71). Wheeler's treaty was sent to the Senate and was accepted by that body, subject to some not very important amendments (see Executive Journal, X, 146–47, August 13, 1856), but it did not go into force.

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Government of Nicaragua and was for a time President of that Republic; the regime of Walker was recognized by the United States (see Richardson, V, 368–74, May 15, 1856); this episode did not terminate until 1857, when Walker was compelled to flee the country and seek asylum on an American vessel of war;[1] and there was the enlistment question, which brought about a decision to "discontinue further intercourse" with Crampton, the British Minister, on May 28, 1856 (see Moore, Digest, IV, 533–35).

To Buchanan was confided the task of settling with Great Britain, if possible, the questions pending between the two Governments in relation to Central America. During the mission of Buchanan at London (where he arrived on August 18, 1853), the Secretary of State for Foreign Affairs was the Earl of Clarendon, who had come into office with the ministry which had been formed early in 1853 with the Earl of Aberdeen as Prime Minister.[2] The discussions, verbal and written, between Buchanan and Clarendon, are amply reported (see Manning, *op. cit.*, VII, 84–123, 503–636, *passim*). The most important of the papers recording the views of the two Governments were the memorandum of Buchanan of January 6, 1854, the statement of Clarendon of May 2, 1854, and the "remarks" of Buchanan of July 22, 1854 (*ibid.*, 518–29, 537–52, 556–77; also in Blue Book, 1856, 259–91). Then for a time "the attention of Her Majesty's Government was engrossed by the war with Russia". There was further correspondence beginning in September 1855 (see *ibid.*, 294–96); regarding offers of arbitration put forward by Clarendon, there was misapprehension on both sides which was not dispelled until the mission of Buchanan was about to terminate (see *ibid.*, 297–303); and Clarendon recorded the fact that during his communications with Buchanan "neither upon that, nor upon any other subject, in the course of two years, had a hasty word passed between us, or anything that would not tend to promote kindly feelings between our respective countries" (*ibid.*, 297–98, February 8, 1856; for the period from September 1855 to February 1856, see also Manning, *op. cit.*, VII, 612–36).

One of the three questions of difference, that of British Honduras or Belize,[3] had been expressly declared by Great Britain to be outside the engagements of the Clayton-Bulwer Treaty (declaration of June 29, 1850, printed above); and Clayton had written at the time that the treaty "was not intended" to apply thereto, leaving the British title, whatever it was, "just as it stood previously". In the cited memo-

[1] On this expedition of Walker, see Scroggs, Filibusters and Financiers, 108–307, *passim*.

[2] Viscount Palmerston became Prime Minister in 1855, but Lord Clarendon continued at the Foreign Office until 1858, when he was succeeded by the Earl of Malmesbury.

[3] For the background and previous history of Belize, see the volumes of Archives of British Honduras, edited by John Alder Burdon, *passim;* included therein are maps of much interest; one worthy of special mention, in volume 2, facing p. 292, is a reproduction of that sent to Canning entitled "Sketch of That Part of Yucatan at Present Possessed by the British, 1826", showing in colors the limits of 1783 and 1786 and the part "held by force of arms since 1798"; see also Williams, *op. cit.*, 2–9, 31–36.

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randum of Buchanan of January 6, 1854, it was said that the right of Great Britain in the Belize settlement was no more than a usufruct based on, and limited in territorial extent [1] by, the Treaty of Peace [2] between Great Britain and Spain of September 3, 1783, and the subsequent convention [3] with Spain of July 14, 1786, in each of which the sovereignty of Spain over the region in question was affirmed; that those two treaties were applicable whether the Spanish sovereignty had reverted to Mexico or to Guatemala; and that this view was supported by the treaty [4] between Great Britain and Mexico of December 26, 1826. On behalf of Great Britain, it was argued that it was never contemplated by either Government that the Clayton-Bulwer Treaty should interfere with the settlement of Belize and that the limits of that settlement were not to be restricted to those of the convention of 1786 because the treaties with Spain could not be held to be necessarily binding with respect to detached portions of the old monarchy and because the convention of 1786 was terminated [5] by the war between Great Britain and Spain which began in 1796 and during which the boundaries of the Belize settlement were enlarged (see the cited statement of Clarendon of May 2, 1854). By way of contrast, it is to be observed that in the discussions preceding the Oregon Treaty of June 15, 1846, the Nootka Sound Convention between Great Britain and Spain of October 28, 1790, was thought by the Government of Great Britain to have remained in full force despite the war between those two states begun in 1796, and was deemed by this Government to have been terminated by that war (see the editorial notes to Document 122).

The other two questions in discussion were the Bay Islands and the Mosquito coast; and in respect to these, discordant constructions of the Clayton-Bulwer Treaty were put forward.

The Bay Islands [6] (Islas de la Bahía) are a small archipelago lying some 25 to 35 statute miles off the mainland coast of the Republic of Honduras, to the north, and mostly between the 86th and 87th meridians west of Greenwich. Roatan (Roatán), the chief island of the group, is situated about 110 statute miles to the eastward of the mainland coast of British Honduras. In the negotiations leading up

[1] That is, to the River Sibun and thus excluding the region extending thence south to the River Sarstoon, which had been occupied by British settlers.

[2] Translation in Chalmers, Collection of Treaties between Great Britain and Other Powers, II, 229–48.

[3] French text and English translation in British and Foreign State Papers, I, pt. 1, 654–63.

[4] Text in British and Foreign State Papers, XIV, 614–29.

[5] Treaties which may be deemed relevant on this point are: the Peace of Amiens (Great Britain, France, Spain, and the Batavian Republic) of March 25 and 27, 1802 (French version in Martens, Recueil des traites, 2d ed., VII, 404–13); the alliance between Great Britain and Spain of January 14, 1809 (British and Foreign State Papers, I, pt. 1, 667–73); the treaty between those two powers of July 5, 1814, and the additional articles of August 28, 1814 (*ibid.*, 273–76, 292–94).

For a highly interesting note on British uncertainty as to the legal status of British Honduras, see Hickson, "Palmerston and the Clayton-Bulwer Treaty", in Cambridge Historical Journal, III, 299, note 12.

[6] For a summary of the history of the Bay Islands, see Williams, *op. cit.*, 9–12, 37–39.

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to the Clayton-Bulwer Treaty, the Bay Islands were not, in the record made, mentioned *eo nomine*, except in the withdrawn note of Bulwer of April 15, 1850, and in the "private" note of Clayton of April 24, 1850 (both quoted above; copies of these are not in the archives of the Department of State). The British declaration of June 29, 1850, had reserved British Honduras and "its Dependencies"; Clayton then wrote that Article 1 of the treaty was not "understood . . . to include . . . the small islands [1] in the neighborhood of that settlement, which may be known as its dependencies" (note of July 4, 1850, printed above); but Bulwer replied under the same date (also printed above) that it was not the intention to "embrace in the Treaty . . . whatever are the Dependencies" of British Honduras. Apart from that note (knowledge of which Clayton later denied), Clayton well knew that the Bay Islands were claimed to be British. Bulwer "in conversation claimed the Island [Roatan] as British, as fully as he claimed the right of Great Britain to the Protectorate" (11 Clayton Papers, 2196–97, Clayton to Crampton, May 16, 1856); Clayton had been informed by Bulwer by the note of April 15, 1850 (later withdrawn), that Roatan and Bonacca (Guanaja) were British possessions and were governed by a British magistrate appointed from Belize (see the text of that note, quoted above; cf. the speeches of Clayton in the Senate on January 12 and 16, 1854, in Congressional Globe, XXIII, appendix, 89–91, 97); and Bulwer wrote that Clayton, when told by Bulwer that the latter considered "British Honduras and its dependencies including two Islands called Ruatan and Bonacca, excluded from this treaty", had "fully acceded to such exception as a matter of course" (enclosure, quoted in part above, to the informal note to Webster of August 17, 1850). Clayton was quoted by Crampton (March 31, 1856) as having "on various occasions since, in conversation with me, stated that he considered Ruatan as much a British possession as Jamaica, or any other British West Indian Island" (Blue Book, 1856, 303); as soon as Clayton learned of that observation, he said that it was "utterly untrue in every particular" (Congressional Globe, XXV, pt. 2, 1205, May 14, 1856); but two days later, in a letter (or draft) to Crampton, couched in friendly terms, Clayton repeated that he "was inclined to believe" that Crampton "had thought some such conversation as this took place" because of the fact that "in all the negotiations" and "in all conversations" Clayton had said that if it could be shown that Roatan was a West Indian island, British sovereignty would follow (11 Clayton Papers, 2196–97). In his despatch of May 19, 1856, Crampton summed up the language of Clayton "spread over a number of conversations and continually repeated", thus (F.O. 5: 643, No. 123):

> If you claim Ruatan as a dependency of Belize I shall be compelled to resist your claim as a violation of the Treaty—if you claim it as a West India Island long since settled it seems to me that you may make out as good a title to it as you have to any of your West India Islands. It is besides a place of small importance to any body and not worth disputing about.

[1] There are small islands off the coast of British Honduras, referred to in the convention between Great Britain and Spain of July 14, 1786, cited above; it was to these that Clayton's words were designed to refer.

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Any form of control of Roatan by Great Britain can hardly be dated prior to 1841, when Her Britannic Majesty's Superintendent at Belize had caused the flag of Honduras to be hauled down and that of Great Britain hoisted in its place; subsequently, magistrates for Roatan were from time to time appointed from Belize, although there appears to have been no settled mode of government in the island (see Williams, *op. cit.*, 39; Squier, States of Central America, 622–23; and the account of Beverly L. Clarke, American Minister to Guatemala and Honduras, in Manning, *op. cit.*, IV, 790–95). By letters patent of March 20, 1852 (British and Foreign State Papers, XLI, 156–62), and proclamations issued pursuant thereto, Roatan and five other named islands "and their dependencies" were designated as "the Colony of the Bay Islands" (see Moore, Digest, III, 140, and Manning, *op. cit.*, VII, 516).

Regarding the Bay Islands, the British Government held that all that could be debatable concerning them was whether they were dependencies of Belize or attached to some Central American state; that whenever Roatan had been permanently occupied by anything more than a military guard or flagstaff, the occupation had been by British subjects; and that, as the pretensions of Great Britain to the islands were not of recent date and were not questioned in 1850, an alteration in the internal form of their government was not a violation of the Clayton-Bulwer Treaty (see the cited statement of Clarendon of May 2, 1854). On behalf of the United States, it was said that the Bay Islands were among those "adjacent" to the American continent which had been restored to Spain by Great Britain under the treaties of 1783 and 1786—that the most approved British geographers had borne testimony to this fact; and the belief was expressed that in 1830, when the British flag had previously been hoisted on Roatan, the act had been formally disavowed by the British Government on complaint made by the Government of the Central American Federation, to whose authority the island had been restored (see the cited papers of Buchanan of January 6 and July 22, 1854).

The American construction of the Clayton-Bulwer Treaty was directly opposed to that of Great Britain, both in respect of the Bay Islands and in respect of the Mosquito coast. The position taken by Marcy was that the Clayton-Bulwer Treaty was not a treaty of the *status quo*, but a treaty of renunciation in Central America. One of the various writings in which the view of Marcy was expressed was the instruction of December 30, 1853, to Solon Borland, Minister to the Republics of Central America, from which these passages are excerpted (D.S., 15 Instructions, American States, 204–12; Manning, *op. cit.*, IV, 51–54):

> So far as respects your mission you will regard it as meaning what the American negotiator intended when he entered into it, and what the Senate must have understood it to mean when it was ratified, Viz: that by it Great Britain came under engagements to the United States to recede from her asserted protectorate of the Mosquito Indians, and to cease to exercise dominion or control in any part of Central America. If she had any colonial possessions therein at the date of the Treaty she was bound to abandon them, and equally bound to abstain from colonial acquisitions in that region. In your official intercourse with the States

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of Central America you will present this construction of the Treaty as the one given to it by your government. It is believed that Great Britain has a qualified right over a tract of country called the Belize, from which she is not ousted by this Treaty, because no part of that tract when restricted to its proper limits is within the boundaries of Central America.

In sharp contrast with the foregoing are the statements of Clarendon that the treaty "was merely prospective in its operation, and did not in any way interfere with the state of things existing at the time of its conclusion", and that "the design of the Contracting Parties was not to disturb any state of things then existing" (Blue Book, 1856, 294–95, September 28, 1855; Manning, *op. cit.*, VII, 615–17).

Great Britain was claiming sovereignty, "dominion" in its fullest sense, over the Bay Islands. Assuming the Clayton-Bulwer Treaty to be, as Marcy contended, one of renunciation, the claim of Great Britain to the Bay Islands was contrary to the covenants of Article 1, unless either (*a*) the islands were to be deemed "dependencies" of Belize at the date of the treaty and within the reservation of June 29, 1850, or (*b*) the islands were to be deemed not within "Central America" in the sense of that expression as used in the treaty. If that expression in the treaty meant the five Republics of Central America, "with their just limits and proper dependencies", which was the view of Clayton (see his note of July 4, 1850, printed above) and also, it seems, of Palmerston (see Blue Book, 1856, 66–67; Bulwer to Palmerston, August 6, 1850, and the latter to the former, September 11, 1850), it was possible to argue that the islands were without the "just" limits of any of those Republics; and it was possible to argue that the Bay Islands were outside Central America both in a political sense and also geographically, as being West Indian islands (see Quarterly Review, XCIX, June 1856, "The Disputes with America", 235–86, by Sir Edward Bulwer-Lytton, afterwards Lord Lytton, at pp. 270–71; and Edinburgh Review, CIV, July 1856, "Great Britain and the United States", 267–98, by Sir Henry Lytton Bulwer, at pp. 289–90). If, however, the Clayton-Bulwer Treaty was to be deemed "merely prospective in its operation", the Bay Islands, even if geographically within Central America, *might* be British consistently with the treaty. But in any and every case, a fundamental question was whether British sovereignty over the Bay Islands existed on April 19, 1850; in support of such sovereignty there was no convincing argument put forward, either actual or suggested; and the relevant communications, formal or informal, between the Plenipotentiaries during the negotiation and the discussions thereof, were of little or no importance.

On the Mosquito question, the two divergent constructions of the treaty were also directly opposed; that question had been a major subject of discussion during the negotiation of the Clayton-Bulwer Treaty; under the Marcy interpretation, the Mosquito protectorate claimed had been renounced; but the British Government held that the protectorate continued, although it was the intention of the parties to "limit and restrict" it (see Manning, *op. cit.*, VII, 545), with

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Greytown excluded therefrom (on this last point, see the undertaking regarding Greytown in the note of Palmerston of November 13, 1849, printed above; and also Palmerston to Bulwer, May 28, 1850, F.O. 115:107, No. 58, printed in large part in Blue Book, 1856, 58–59, notably this statement: "it is required by the spirit and meaning of the Convention which you have signed with M[r] Clayton, that Grey Town should not, either directly or indirectly, be under the Controul either of Great Britain or of the United States"). And it is interesting to note that it was the view of the Foreign Office, soon after the signature of the treaty, that there was *some* change in the legal position in respect of Mosquito. Palmerston was asked whether an instruction lately sent to Chatfield to conclude with Honduras a treaty settling the boundary between that Republic and the Mosquito territory and to send such treaty to England for the approval of the British Government before communication thereof to the Mosquito "King", might not be at variance with the wording of Article 1. His answer was that Chatfield should be "told that the Treaty of Boundary to be negotiated must be concluded between Mosquito King & the Republic" (June 5, 1850; F.O. 5:512, memoranda with despatch No. 88, of May 20, 1850); and one sentence of the above-cited instruction of May 28, 1850, reads: "But Her Majesty's Government feel that the present state of Things in regard to the Mosquito Territory, and especially with regard to the Port of Grey Town, is in many respects inconvenient, and not entirely in conformity with the true spirit and meaning of the Convention just concluded between Great Britain and the United States" (as printed in Blue Book, 1856, 58–59, all the words of that sentence following "inconvenient" are omitted).[1]

Territorially, the claim to the Mosquito protectorate had embraced the coast from Cape Honduras to and including Greytown; apart from that port, if the Mosquito protectorate as asserted prior to the Clayton-Bulwer Treaty were valid, and if British Honduras extended as far south as the Sarstoon River, the entire Caribbean coastal region, from whatever limits might be assigned to Greytown up to the Mexican frontier, was under the control of Great Britain, except the strip from the Sarstoon to Cape Honduras.

The Government of the United States had denied that Mosquito was a state and consequently had denied that any protectorate existed or could exist; and indeed it was found somewhat difficult, even by British statesmen, to maintain a properly serious mien while speaking of the Mosquito "King" and his "Government" (see the remarks of Viscount Palmerston and of Lord John Russell quoted in Buchanan's memorandum of January 6, 1854).

The mission of Buchanan [2] ended (March 15, 1856) without agreement on the subjects discussed at London and in an atmosphere of uncertainty at both capitals (see Moore, Works of James Buchanan, X, 78–79, and Williams, *op. cit.*, 203–16).

[1] But the full text of that instruction had been communicated with the note of Bulwer to Webster dated August 16, 1850 (D.S., 27 Notes from the British Legation; Manning, *op. cit.*, VII, 402–3).

[2] On Buchanan's mission, see Williams, *op. cit.*, 149–67, 196–209.

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The successor of Buchanan as Minister at London was George M. Dallas, of Pennsylvania (appointed February 4, 1856), who presented his letter of credence on April 4, 1856. Negotiations during the early months of his mission resulted in the signing of the Dallas-Clarendon Treaty on October 17, 1856 (for the opening correspondence, a draft of August 27, 1856, etc., see Blue Book, 1856, "Further Correspondence with the United States Respecting Central America", and Blue Book, 1860, "Correspondence Respecting Central America, 1856–60", 1–6; the latter publication is hereinafter cited as "Blue Book, 1860"; these and numerous other papers relevant to the negotiations are in Manning, *op. cit.*, VII, 125–63, 639–95, *passim*). The text of that treaty, with the amendments proposed by the Senate resolution of March 12, 1857 (Executive Journal, X, 246–48), indicated in brackets for deletions and by italics for words inserted, follows (D.S., Unperfected F1; the words inserted are from the attested resolution of the Senate in the treaty file):

The United States of America, and Her Majesty The Queen of the United Kingdom of Great Britain and Ireland, being desirous to settle in a friendly manner the questions which have come into discussion between them relative to Central America, have resolved to conclude a Treaty for that purpose, and have named as Their respective Plenipotentiaries, that is to say:—

The President of the United States of America, George Mifflin Dallas, Esquire, Envoy Extraordinary and Minister Plenipotentiary of the United States to Her Britannic Majesty;

And Her Majesty The Queen of the United Kingdom of Great Britain and Ireland, The Right Honourable George William Frederick, Earl of Clarendon, Baron Hyde of Hindon, a Peer of the United Kingdom, a Member of Her Britannic Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, Knight Grand Cross of the Most Honourable Order of the Bath, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs;

Who, after having communicated to each other their respective Full Powers, found in good and due form, have agreed upon and concluded the following Articles.

ARTICLE I.

The United States of America and Her Britannic Majesty agree *as common friends of the parties concerned* [jointly] to propose to the Republics of Nicaragua and of Costa Rica the arrangements contained in the following Articles.

ARTICLE II.

A Territory comprised within the following limits shall be set apart for the Mosquito Indians:

The Boundary Line shall begin at the Mouth of the River Rama in the Caribbean Sea; thence it shall run up the mid-course of that River to it's source; and from such source proceed in a line due West to the Meridian of 84°15′ Longitude West from Greenwich; thence due North up the said Meridian until it strikes the River Brachma, and down the mid-course of that River to it's Mouth in the Sea at about Latitude from 14° to 15° North, and Longitude 83° West from the Meridian of Greenwich; and thence Southerly along the Shore of the Caribbean Sea to the Mouth of the River Rama, the point of commencement.

The inland Boundary shall be designated and marked out by two Commissioners, to be appointed, one by Her Britannic Majesty, and one by The President of Nicaragua.

If in making the survey for this purpose, there should be discovered any natural Boundary within fifteen English miles of the above mentioned Meridian line, on the Western side of such Meridian line, and extending the whole distance from the River Brachma to the Parallel of the River Rama, it shall be the duty of

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the Commissioners to report the same; and such natural Boundary shall be adopted instead of the astronomical one.

If in making the Survey it should be found that the due North line on the Meridian of 84°15′ Longitude West from Greenwich does not strike the River Brachma, it is agreed that the Boundary shall be completed by a line to be drawn due West from the Source of the said River to the said Meridian; and that if the Commissioners should discover any natural Boundary within Five English Miles North of the line to be in such case drawn due West from the Source of the River Brachma to the Meridian of 84°15′ Longitude West from Greenwich, it shall be their duty to report the same, and such natural boundary shall be adopted in preference to the due West line.

ARTICLE III.

The Mosquito Indians, confining themselves within the Territory designated by the preceding Article, shall enjoy the right to make, by their National Council or Councils, and to carry into effect, all such Laws *not inconsistent with the sovereign rights of the State of Nicaragua* as they may deem necessary for the Government and Protection of all Persons within the same, and of all Property therein, belonging to their People or to such Persons as have connected themselves with them. Their rights of Property and of local Government, within the Territory defined as described in the preceding Article, shall be recognized, affirmed, and guaranteed by the Republic of Nicaragua in Treaties to be made by that State with The United States and Great Britain, respectively; and the Republic of Nicaragua in each of those Treaties shall stipulate and engage that it will enact laws to prevent the purchase of Lands from the Mosquito Indians, and *to exclude the settlement of other persons amongst them without the license of the State of Nicaragua, and the consent of the said Indians, and also* the introduction and sale of spirituous liquors amongst the said Indians; and that the Republic will protect them from all inroads, intrusions, or aggressions along their Western and Northern frontier.

The Mosquito Indians shall not be able *to enter into any agreement, or alliance with, or* to cede their Territory or Rights *in said Territory* to any [other] State without the consent of *Nicaragua* The United States and Great Britain, by each separately expressed; it being however understood that nothing shall preclude the conclusion of such voluntary compact and arrangements between the Republic of Nicaragua and the Mosquito Indians, by which the latter may be *admitted to be citizens, and* definitively incorporated and united with the former [; but it shall be stipulated, in such case, that the said Mosquito Indians shall enjoy the same rights, and be liable to the same duties, as the other Citizens of the said Republic of Nicaragua].

ARTICLE IV.

All the Territory South of the River Wanx or Segovia, included within the limits of the reservation set apart for the Mosquito Indians as described in Article II, shall, without prejudice to the rights of the Republic of Honduras, or to any question of boundary between that Republic and the Republic of Nicaragua, be recognized and declared to be within the limits and sovereignty of the Republic of Nicaragua, on the following conditions:

1. The Republic of Costarica shall retain for it's Citizens the freedom of Navigation up and down the River San Juan from it's Mouth to the Mouth of the Serapiqui River, with liberty to enter and quit the Port of San Juan or Grey Town with their Vessels, and to store their Cargoes in that Port; and without being subject to any duties of import or export, tonnage duty, or other tax or public charge whatever, except for light money and other necessary Port charges.

2. The Republics of Nicaragua and of Costarica shall allow the territorial disputes between them, and the limits or extension to be given to the Town of San Juan or Grey Town (if the same cannot be amicably adjusted between themselves and that Town) to be settled by the Arbitration of the United States of America and Great Britain, who in any doubtful point shall be able to call for the decision of a third party.

[3. All *bonâ fide* [1] grants of land for due consideration made in the name and by the authority of the Mosquito Indians since the 1st of January 1848, and lying

[1] Underscored in the original treaty.

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beyond the limits of the Territory reserved for said Indians, shall be confirmed, provided the same shall not exceed in any case the extent of one hundred Yards square, if within the limits of San Juan or Grey Town, or one league square if without the same, and provided that such grant shall not interfere with other legal grants made previously to that date by Spain, the Republic of Central America, or either of the present states of Central America, and provided further that no such grant within either of the said States shall include Territory desired by it's Government for Forts, Arsenals, or other public Buildings. This stipulation is in no manner to affect the grants of Land made previously to the 1st of January 1848.

In case however any of the Grants referred to in the preceding Paragraph of this Section should be found to exceed the stipulated extent, the Commissioners hereinafter mentioned shall, if satisfied of the *bona fides* [1] of any such Grants, award to the Grantee or Grantees, or to his or their Representatives or Assigns, an Area equal to the stipulated extent.

And in case any *bonâ fide* [1] Grant, or any part thereof, should be desired by the Government for Forts, Arsenals, or other public Buildings, the Government shall compensate the holders for the same; the amount of compensation to be assessed and determined by the said Commissioners.]

3 [4]. The Republic of Nicaragua shall constitute and declare the Port of Grey Town or San Juan a free Port, and the City a free City (though under the Sovereign Authority of the Republic) whose inhabitants shall enjoy the following rights and immunities:

A. The right to govern themselves by means of their own Municipal Government, to be administered by legislative, executive, and judicial Officers of their own election, according to their own regulations.

B. Trial by Jury in their own Courts.

C. Perfect freedom of religious belief and of worship, public and private.

D. The Municipal Government shall lay no duties on goods exported, nor any duties on goods imported intended for transit across the Isthmus or for consumption without the City, nor any duties of tonnage on Vessels, except such as may be necessary for the police of the Port and the maintenance of the necessary Lighthouses and Beacons:—Provided that the present condition shall not interfere with, or prevent the levy of, a temporary duty on imports for the purpose of the payment to the Mosquito Indians, as stipulated in Article V.

E. Exemption from military Service except for the defence of the City, and within the bounds of the same.

Article V.

The Republic of Nicaragua shall enter into positive Treaty Stipulations with each of the two Governments of the United States of America and of Great Britain, that it will make the grant of freedom to the City of Grey Town or San Juan subject to the condition that the Municipality of the said City shall, as soon as organized, pass Laws and Ordinances levying, by tax or duty on imports, some reasonable Sum to be paid half-yearly to the Mosquito Indians by way of Annuity for a limited period, as an indemnity and compensation for their interest in the Territory recognized and declared by the first Clause of Article IV to be within the limits and sovereignty of the Republic of Nicaragua.

Article VI.

Her Britannic Majesty and the Republic of Nicaragua shall, within Six Months after the exchange of the Ratifications of the Treaty to be concluded between them in virtue of the present arrangements, appoint each a Commissioner for the purpose of designating and marking out the inland boundary separating the Territory to be set apart for the Mosquito Indians, as described in Article II of the present Treaty, from the rest of the Territory of the Republic.

[They shall also appoint, within the same period, each a Commissioner for the purpose of deciding upon the *bona fides* [1] of all Grants of Lands mentioned in §3 of Article IV of the Treaty as having been made by the Mosquito Indians of

[1] Underscored in the original treaty.

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lands heretofore possessed by them, and lying beyond the limits of the Territory described in Article II.]

They shall further appoint, within the same period, each a Commissioner for the purpose of determining the amount, the period of duration, and the time, place, and mode of payment of the annuity to be paid to the Mosquito Indians according to the stipulations of Article V of the present Treaty.

Her Britannic Majesty and the Republic of Nicaragua shall be at liberty either to name the same person to fulfill the duties of Commissioner for *the two* [all three or for any two of the] purposes above described, or to name a separate and distinct Person to be Commissioner for each purpose, as they may see fit.

ARTICLE VII.

The Commissioners mentioned in the preceding Article shall meet at such place or places as shall be hereafter fixed, at the earliest convenient period after they shall have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn Declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to justice and equity, without fear, favour, or affection to their own Country, upon all the matters referred to them for their decision; and such Declaration shall be entered on the record of their proceedings.

The Commissioners shall then, and before proceeding to any other business, name some third Person to act as Arbitrator or Umpire in any case or cases in which they may themselves differ in opinion. Each pair of Commissioners shall separately name the Person so to act as their Arbitrator or Umpire. The Person or Persons so to be chosen shall, before proceeding to act, make and subscribe a solemn Declaration, in a form similar to that which shall already have been made and subscribed by the Commissioners, which Declaration shall also be entered on the record of the proceedings. In the event of the death, absence, or incapacity of such Person or Persons, or of his or their omitting, or declining, or ceasing to act as such Arbitrator or Umpire, another Person or other Persons shall be named as aforesaid to act in his or their place or stead, and shall make and subscribe such Declaration as aforesaid.

Her Britannic Majesty and the Republic of Nicaragua shall engage to consider the decision of the two Commissioners conjointly, or of the Arbitrator or Umpire, as the case may be, as final and conclusive on the matters to be respectively referred to their decision, and forthwith to give full effect to the same.

ARTICLE VIII

The Commissioners and the Arbitrators or Umpires shall keep accurate records and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ such Clerk or Clerks or other Persons as they shall find necessary to assist them in the transaction of the business which may come before them.

The Salaries of the Commissioners shall be paid by their respective Governments. The contingent Expenses of the Commissioners, including the Salary of the Arbitrators or Umpires, and of the Clerk or Clerks, shall be defrayed in equal moieties by the two Governments.

[ARTICLE IX.

The United States of America and Her Majesty The Queen of the United Kingdom of Great Britain and Ireland bind themselves, in case the Republics of Nicaragua and of Costarica, or either of them, should refuse to accept the arrangements contained in the preceding Articles, not to propose nor consent to any other arrangements more favourable to the refusing Party or Parties.]

ARTICLE *IX* [X]

The present Treaty shall be ratified by The President of the United States of America by and with the Advice and Consent of the Senate thereof, and by Her

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Britannic Majesty; and the Ratifications shall be exchanged at London as soon as possible within the space of Six Months.

In Witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto their respective Seals.

Done at London, the Seventeenth day of October, in the Year of Our Lord One Thousand Eight Hundred and Fifty Six.

[Seal] G. M. DALLAS.
[Seal] CLARENDON

Separate Articles.[1]

ARTICLE I.

Whereas the arrangements set forth in the Treaty of this date are provided as an adequate substitute for the Protection heretofore extended by Great Britain to the Mosquito Indians: And Whereas one or the other, or both, of the Contracting Parties may find in the condition of their political relations with the Republic of Nicaragua, obstacles to prevent an immediate execution of the said arrangements:—Now therefore it is agreed and understood as follows:—

1. That any delay in carrying out the said arrangements, arising from the circumstances or relations of the Republic of Nicaragua, shall in no respect impair the validity or force of the Treaty as between the Contracting Parties; but the same shall remain obligatory upon, and to be executed by, them as early as may be practicable.

2. That whichever of the two Contracting Parties may soonest find itself in such political relations with the Republic of Nicaragua as enable it so to do, shall first propose singly to that Republic the arrangements contained in this Treaty, and shall obtain by means of a separate Treaty it's assent to those arrangements:—the other Contracting Party engaging, and reserving to itself the right, also to conclude with the said Republic at the earliest fitting moment, a Treaty containing the said arrangements.

ARTICLE II.

And Whereas the Relations of Amity between the Contracting Parties, and the neutrality of any and every communication by Canal or Railway across the Isthmus which connects North and South America, and to which communication by Canal or Railway their Protection has been or shall be extended, may be further assured by some definite arrangement on two other questions which have come into discussion; now it is mutually agreed and understood:—

1º That Her Britannic Majesty's Settlement called The Belize or British Honduras, on the Shores of the Bay of Honduras, bounded on the North by the Mexican Province of Yucatan, and on the South by the River Sarstoon, was not and is not embraced in the Treaty entered into between the Contracting Parties on the 19th day of April 1850:—and that the limits of the said Belize, on the West, as they existed on the said 19th of April 1850, shall, if possible, be settled and fixed by Treaty between Her Britannic Majesty and the Republic of Guatemala, within Two Years from the exchange of the Ratifications of this Instrument; which said boundaries and limits shall not at any time hereafter be extended.

[2º That the Islands, and their Inhabitants of Roatan, Bonaca, Utila, Barbaretta, Helena, and Morat, situate in the Bay of Honduras, and known as the Bay Islands, having been, by a Convention[2] bearing date the Twenty Seventh day of August 1856, between Her Britannic Majesty and the Republic of Honduras, constituted and declared a Free Territory under the Sovereignty of the said Republic of Honduras, the two Contracting Parties do hereby mutually

[1] Underscored in the original treaty.

[2] For the text of this convention regarding the Bay Islands and of the treaty of commerce and the convention regarding the Mosquito Indians of the same date, see Blue Book, 1860, 6–24. By the Honduran Legislative Assembly the treaty was ratified and the two conventions were rejected (see *ibid.*, 39, 40).

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engage to recognize and respect in all future time the Independence and Rights of the said Free Territory, as a part of the Republic of Honduras.]

2. The two contracting parties do hereby mutually engage to recognize and respect the islands of Ruatan, Bonaco, Utila, Barbaretta, Helena, and Morat, situate in the Bay of Honduras, and off the coast of the Republic of Honduras, as under the sovereignty and as part of the said Republic of Honduras.

ARTICLE III.

The present Separate Articles shall have the same force and validity as if they had been inserted, word for word, in the Treaty between The United States of America and Her Britannic Majesty, signed this day. They shall be ratified by The President of the United States, by and with the Advice and Consent of the Senate thereof, and by Her Britannic Majesty; and the Ratifications shall be exchanged at the same time as those of the Treaty.

In Witness whereof the respective Plenipotentiaries have signed the present Separate Articles, and have affixed thereto the Seal of their Arms.

Done at London, the Seventeenth day of October, in the Year of Our Lord One Thousand Eight Hundred and Fifty Six.

[Seal] G. M. DALLAS.
[Seal] CLARENDON

The Dallas-Clarendon Treaty was one of mutual concessions from views previously expressed; the British Government yielded somewhat in respect of the Mosquito protectorate and the Bay Islands, and the United States in respect of British Honduras, which was described as bounded on the south by the River Sarstoon. Even with the Senate amendments, the treaty was reluctantly approved by President Buchanan,[1] and ratification followed on March 19, 1857 (see Blue Book, 1860, 31–32, 62); but the British Government was unwilling to agree to the amendment proposed regarding the Bay Islands (Separate Article 2, clause 2), though accepting the others (*ibid.*, 33–35). A new formula regarding the Bay Islands, proposed by the British Government to the end that the Dallas-Clarendon Treaty, modified in respect of the one point then in disagreement, might be adopted in a revised version, was not accepted (see *ibid.*, 33–46, and Manning, *op. cit.*, VII, 168–71, 696–700, 704–6), and the Dallas-Clarendon Treaty failed to go into force (see generally on this negotiation, Williams, *op. cit.*, 212–30, and for the later period to 1860, *ibid.*, 231–69).

The positions of the two Governments on the Central American questions at issue were now not far apart. The British Government, with the assent of the United States, decided (October 1857), in lieu of further efforts for a treaty with the United States supplemental to the Clayton-Bulwer Treaty, to send a representative (Sir William Gore Ouseley) to Central America to make, by means of separate negotiations with the interested Central American Republics, a definitive settlement which would carry the Clayton-Bulwer Treaty into execution according to the general tenor of the interpretation put upon it by the United States (see Blue Book, 1860, 58–62). The nature of the instructions for the Ouseley mission was communicated

[1] Lewis Cass was now Secretary of State, and the British Minister at Washington was Lord Napier.

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to Cass by note of Napier of November 30, 1857; and at the same time the willingness of the British Government to submit controverted points in the Clayton-Bulwer Treaty to arbitration was again expressed, with "an offer to refer the interpretation of the disputed clauses of the Treaty of 1850, without any reservation, to the decision of any European Power whom the Government of the United States may prefer to select" (see Manning, *op. cit.*, VII, 720–33). There was, however, misunderstanding as to the procedure preliminary to the progress of the Ouseley mission and consequently delay; an account of the circumstances to November 8, 1858, is in the note of that date from the Secretary of State to Lord Napier, British Minister at Washington, the accuracy of which was favorably commented on by the Earl of Malmesbury (see Blue Book, 1860, 155), who had succeeded the Earl of Clarendon at the Foreign Office some months previously;[1] therein the common ground reached and the points of disagreement were summed up as follows (Manning, *op. cit.*, VII, 189–201, at pp. 200–1):

> It is under this impression, and in order to prevent two great Nations from failing in their attempts to adjust an important controversy from a mere question of form, or mere misunderstanding of each other's views, that I have entered into this extended narrative. It is of no small consequence either to the United States or Great Britain, that these Central American controversies between the two countries should be forever closed. On some points of them, and I have been led to hope, on the general policy which ought to apply to the whole Isthmian region, they have reached a common ground of agreement. The Neutrality of the Interoceanic routes, and their freedom from the superior and controling influence of any one Government, the principles upon which the Mosquito Protectorate may be arranged with justice alike to the sovereignty of Nicaragua and the Indian tribes, the surrender of the Bay Islands under certain stipulations for the benefit of trade and the protection of their British occupants, and the definition of the boundaries of British Belize,—about all these points there is no apparent disagreement except as to the conditions which shall be annexed to the Bay Islands' surrender, and as to the limits which shall be fixed to the settlements of Belize. Is it possible that, if approached in a spirit of conciliation and good feeling, these two points of difference are not susceptible of a friendly adjustment? To believe this would be to underestimate the importance of the adjustment, and the intelligent appreciation of this importance which must be entertained by both nations.

On November 16, 1857, a treaty between the United States and Nicaragua was signed at Washington by the Secretary of State and the Minister from Nicaragua (Antonio José de Irisarri), which is commonly called the Cass-Irisarri Treaty (D.S., Unperfected W2; English version in Correspondence in Relation to the Proposed Interoceanic Canal, 265–72); the terms of that treaty were at once communicated to the British Government, by whom no objection thereto was raised (see Blue Book, 1860, 68–70, 78, 80–81); but the Government of Nicaragua desired modifications of the Cass-Irisarri Treaty (see *ibid.*, 128–29, 137); that treaty was not submitted to the Senate of the United States and failed to go into force. The clauses of the Cass-Irisarri Treaty relative to the right of transit became the

[1] The administration of the Earl of Derby succeeded that of Viscount Palmerston on February 28, 1858.

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basis of those of the draft for a treaty between Great Britain and Nicaragua which was made part of the instructions to Ouseley (*ibid.*, 100–12, August 9, 1858); but the treaty with Nicaragua which Ouseley signed at León with the Nicaraguan Secretary of State for Foreign Relations, Pedro Zeledón, on January 18, 1859, contained various clauses to which the British Government did not assent (see *ibid.*, 186–97, where the English version is printed); one of these was an engagement on the part of Great Britain to "forbid and prevent the formation of armed expeditions in her dominions, whether for the invasion of Nicaragua or with the intention or under the pretext of aiding any of the political parties or bodies that may exist in that country". The consent of Ouseley to that clause led to the insertion of a somewhat similar clause in a treaty with Nicaragua signed *sub spe rati* by Mirabeau B. Lamar, Minister Resident, on behalf of the United States, and by Pedro Zeledón on behalf of Nicaragua on March 16, 1859 (D.S., Unperfected X2); the clause in question was found as unacceptable by the United States as it had been by Great Britain (see Blue Book, 1860, 234, 259; Manning, *op. cit.*, IV, 129–30, 135–41, 143); the Lamar-Zeledón Treaty also failed to go into force.[1]

There was no definitive result from the Ouseley mission (except a postal convention between Great Britain and Nicaragua; British and Foreign State Papers, XLIX, 20–26); but before Ouseley left Washington for Central America the boundary between Costa Rica and Nicaragua, which had been in question from a time prior to the Clayton-Bulwer Treaty, was defined by the Treaty of Limits between those two Republics signed at San José on April 15, 1858 (English translation in British and Foreign State Papers, XLVIII, 1049–52);

[1] The articles of the Lamar-Zeledón Treaty were in general the same as those of the Cass-Irisarri Treaty; the exceptions were a few clauses added to Articles 15 and 16, one of which is referred to in the text.

The procedural history of the Lamar-Zeledón Treaty was prolonged and somewhat complex. The treaty was first ratified on the part of Nicaragua on March 19, 1859. It was again ratified by Nicaragua on July 22, 1859, with the omission of the clause objected to by the United States (the final clause of Article 16). The treaty was submitted to the Senate, with numerous accompanying papers, by the presidential message of December 19, 1859 (Senate Confidential Document No. 84, 36th Congress, 1st session, Regular Confidential Documents, LI, 1–72). The treaty was first rejected by the Senate and then accepted on June 26, 1860, subject to the omission mentioned and to the addition of a clause in the same article (see Executive Journal, XI, 109–10, 163–64, 218). As thus amended, the treaty was again ratified on the part of Nicaragua on March 13, 1861, subject to another additional clause in Article 16; this action of the Government of Nicaragua was submitted to the Senate on April 15, 1862 (Senate Confidential Document No. 421, 37th Congress, 2d session, Regular Confidential Documents, LI, 599–600). Advice and consent of the Senate to the amendments theretofore proposed was given on May 7, 1862 (see Executive Journal, XII, 238, 283). Ratification on the part of the United States followed on July 2, 1862; but the ratifications of the treaty were not exchanged. However, the substantive amendments to the Lamar-Zeledón Treaty which have been mentioned were all carried into the treaty of June 21, 1867 (15 Statutes at Large, 549–62). Indeed, that treaty of 1867 may be said to be in all essentials the same as the amended Lamar-Zeledón Treaty except for the omission of Article 20 of the earlier treaty, which declared unaffected any rights of passage which Costa Rica might have in the San Juan River (see Manning, *op. cit.*, IV, 629–30).

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thereby the line began in the delta of the River San Juan de Nicaragua at a point called Punta de Castilla, proceeded up the right bank of that river to a point three miles below the Castillo Viejo and around the same to a point distant two miles from the river, ran thence, parallel with the right bank of the river and with the shore of Lake Nicaragua but two miles distant therefrom, to the River Sapoá, and thence in a straight line to the center of Salinas Bay on the Pacific Ocean. The boundary so fixed by that Treaty of Limits thus left to Nicaragua the port of Greytown and to Costa Rica the region of Nicoya or Guanacaste. The validity of the Treaty of Limits was upheld by the arbitral award of March 22, 1888 (see Moore, International Arbitrations, II, 1945–68; and for a later award under the demarcation convention of April 8, 1896, see *ibid.*, V, 5074–79).

The mission with which Ouseley had been charged was, at first in part and then wholly, entrusted to Charles (later Sir Charles) Lennox Wyke, Chargé d'Affaires at Guatemala, who negotiated with the Minister for Foreign Affairs of Guatemala, Pedro de Aycinena, the treaty signed at Guatemala April 30, 1859 (text in Blue Book, 1860, 251–55), the ratifications of which were exchanged on the following September 12 (*ibid.*, 300); thereby the boundary between the Republic of Guatemala and British Honduras was defined, and it was agreed that all the territory north and east of the line thus described "belongs to Her Britannic Majesty":

> Beginning at the mouth of the River Sarstoon in the Bay of Honduras, and proceeding up the mid-channel thereof to Gracias á Dios Falls; then turning to the right and continuing by a line drawn direct from Gracias á Dios Falls to Garbutt's Falls on the River Belize, and from Garbutt's Falls due north until it strikes the Mexican frontier.

Some delay ensued before further negotiations were begun, as Wyke went on leave to England; he returned as Envoy Extraordinary and Minister Plenipotentiary on a special mission to the Republics of Central America; the first result of that mission was the treaty between Great Britain and Honduras signed at Comayagua November 28, 1859, between the British Plenipotentiary and the Political Chief of the Department of Comayagua, Francisco Cruz (English version in *ibid.*, 308–10), whereby the Bay Islands were recognized as a part of the Republic of Honduras. The sovereignty of that Republic over the country occupied or possessed by the Mosquito Indians within its limits was also recognized; and clauses regarding land grants[1] and claims were included. The ratifications of that treaty were exchanged on April 18, 1860 (British and Foreign State Papers, XLIX, 13–19).

Following negotiations of Wyke with the Government of Nicaragua, two treaties were signed at Managua. By the first (January 28,

[1] On the Honduran and Nicaraguan land grants, see Moore, International Arbitrations, II, 2106–7; Darby, International Tribunals, 4th ed., 786; Hertslet's Commercial Treaties, XI, 370–72, XIII, 667–68; Lapradelle, Recueil des arbitrages internationaux, II, xi–xiii; Revue de droit international, 2d series, IV, 368; Blue Book, 1856, 166; La Fontaine, Pasicrisie internationale, 54–56; Hispanic American Historical Review, XVI, 342–44. The subject of the land grants has as yet been meagerly treated.

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1860), the sovereignty of Nicaragua over the Mosquito territory within that Republic was recognized; autonomy was granted to the Mosquito Indians within a defined coastal region (now[1] the Department of Zelaya) which began at the River Rama on the south, extended north to the River Hueso, and was bounded on the west by the meridian of 84°15′ west; Greytown was to become a free port under the sovereignty of Nicaragua; and there were clauses regarding land grants made by authority of the Mosquito Indians. The second treaty (February 11, 1860) was one of friendship, commerce, and navigation. The approval of the two treaties by the Congress of Nicaragua was given subject to certain textual modifications (see Blue Book, 1860, 320–28); but these were accepted by the British Government, and the ratifications were exchanged at London on August 2, 1860 (for the texts of the treaties and of the declaration made upon the exchange of ratifications, see British and Foreign State Papers, L, 96–126).

The treaties last mentioned, made in 1859 and 1860 between Great Britain and the Republics of Guatemala, Honduras, and Nicaragua, respectively, effected a settlement as between the United States and Great Britain of Central American questions which had long been pending; that settlement was declared in the annual message of Buchanan of December 3, 1860, to be "entirely satisfactory to this Government" (see the paragraph[2] in Richardson, V, 639–40, where the treaties with Honduras and Nicaragua are mentioned); and those treaties may be said to have brought to an end one phase of the history of the Clayton-Bulwer Treaty.

That history extended over half a century (for the period from 1860, see Williams, *op. cit.*, 270–310; also Moore, Digest, III, 183–222); by Article 1 of the Hay-Pauncefote Treaty of November 18, 1901, it was agreed that the Clayton-Bulwer Treaty was thereby superseded; certainly no treaty of the United States made during the nineteenth century has been the subject of more diplomatic correspondence, of more extensive legislative debates, or of more voluminous literature, than has the Clayton-Bulwer Treaty.

[1] For the Mosquito question subsequent to 1860, see Williams, *op. cit.*, 288–99, and Moore, Digest, III, 222–54.

[2] It was subsequently intimated that Buchanan did not know the terms of the treaty between Great Britain and Nicaragua of January 28, 1860 (see Wharton, Digest of International Law, II, 241–42); but printed copies of that treaty with Nicaragua and the declaration therewith, of the other treaties with Nicaragua, and of the treaty with Honduras, were transmitted to the Secretary of State by the British Chargé d'Affaires on August 27, 1860; and at that time reference was made to the earlier communication of the treaty between Great Britain and Guatemala (D.S., 40 Notes from the British Legation; Manning, *op. cit.*, VII, 767–68).

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Treaty Series No. 55
10 Statutes at Large, 900-8
18 *ibid.*, pt. 2, Public Treaties, 560-63

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NEW GRANADA : MAY 4, 1850

Consular Convention, signed at Washington May 4, 1850. Original in Spanish and English.
Submitted to the Senate May 9, 1850. (Message of May 6, 1850.) Resolution of advice and consent September 24, 1850. Ratified by the United States November 14, 1850. Ratified by New Granada October 30, 1851. Ratifications exchanged at Bogotá October 30, 1851. Proclaimed December 5, 1851.

Convencion Consular entre la Republica de Nueva Granada i los Estados Unidos.

En el nombre de la Santisima Trinidad.

Los Gobiernos de las Repúblicas de Nueva Granada i de los Estados Unidos de America, habiendose comprometido por el articulo 34 del tratado [1] de Paz, Amistad, navegacion i Comercio, celebrado en 12 de Deciembre de 1846, en formar una convencion consular que declare especialmente las atribuciones e inmunidades de los cónsules i vice-cónsules de las partes respectivas; para dar cumplimiento á dicho articulo, i con el objeto de protejer mas eficazmente su comercio i navegacion, han convenido en celebrar las estipulaciones necesarias sobre la materia, i al efecto han autorizado competentemente á sus respectivos plenipotenciarios

Consular Convention between the Republic of New Granada and the United States of America.

In the name of the Most Holy Trinity.

The Governments of the Republics of New Granada and the United States of America, having engaged by the thirty-fourth article of the Treaty [1] of Peace, amity, navigation and commerce, concluded on the 12 of December 1846, to form a Consular Convention, which shall declare specially, the powers and immunities of the Consuls and Vice Consuls of the respective parties, in order to comply with this article and more effectively to protect their commerce and navigation, they have given adequate authority to their respective plenipotentiaries—to wit: the Government of New Granada to Raphael Rivas its Chargé d'affaires in the United States,

[1] Document 125.

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á saber: el Gobierno de la Nueva Granada á Rafael Rivas, su Encargado de Negocios en los Estados Unidos, i el Gobierno de los Estados Unidos á Juan M. Clayton, Secretario de Estado, quienes previo el canje i examen de sus plenos poderes que hallaron bastantes i en debida forma, convinieron en los Articulos siguientes:—

and the Government of the United States to John M. Clayton, Secretary of State, who after the exchange and examination of their full powers, found to be sufficient and in due form, have agreed upon the following articles.

ARTÍCULO 1

Cada una de las Republicas contratantes podrá mantener en las principales cuidades, o plazas comerciales de la otra i en los puertos abiertos en ella al comercio estranjero, cónsules particulares encargados de protejer los derechos e intereses comerciales de su nacion i de favorecer a sus compatriotas en las dificultades que les ocurran. Tambien podrán nombrar Cónsules jenerales como jefes de los demas Cónsules ó para atender a muchas plazas comerciales ó puertos a un tiempo, i vice cónsules para los puertos de menor importancia ó para obrar bajo la dependencia de los Cónsules particulares. Sin embargo, cada Republica podrá esceptuar aquellas cuidades, plazas ó puertos en donde no les pareciere conveniente la residencia de dichos empleados; pero esta escepcion será comun á todas las naciones. Lo que en la presente Convencion se diga de los Cónsules en jeneral, se entenderá no solo de los Cónsules particulares, sino tambien de los Cón-

ARTICLE I.

Each of the two contracting Republics, may maintain in the principal cities, or comercial places of the other, and in the ports open to foreign commerce, Consuls of its own, charged with the protection of the commercial rights and interests of their nation, and to sustain their countrymen in the difficulties, to which they may be exposed. They may likewise appoint Consuls general, as Chiefs over the other Consuls, or to attend to the affairs of several commercial places at the same time, and Vice Consuls for Ports of minor importance, or to act under the direction of the Consuls. Each Republic may however except those cities, places or ports in which it may consider the residence of such functionaries inconvenient; such exception being common to all nations. All that is said in this Convention of Consuls in general, shall be considered as relating not only to Consuls properly so called, but to Consuls General and Vice Consuls, in all

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sules jenerales, i de los vice Cónsules siempre que puedan hallarse en los casos de que se trata.

ARTICULO 2º

Los Cónsules nombrados por una de las partes contratantes para residir en los puertos, ó plazas de la otra, deben presentar al Gobierno de la República en que van á residir, sus letras patentes ó de provision para que si lo tiene á bien, les ponga el correspondiente *exequatur*, que sera espedido sin cobrar derecho alguno; i obtenido este, las exhibirán á las autoridades superiores del lugar en que hayan de ejercer sus funciones, para que ellas ordenen se les reconosca en sus empleos i se les guarden las prerogativas que les corresponden en el respectivo distrito consular. El Gobierno que recibe el empleado podrá retirarle cuando lo estime conveniente el *exequatur* de sus letras Consulares, pero en tal caso espresará la razon que lo mueve á este procedimiento.

ARTICULO 3º

Los Consules admitidos en cada Republica podrán ejercer en su respectivo distrito Consular las funciones siguientes:

1º Dirijirse á las autoridades del distrito de su residencia i ocurrir en caso necesario al Gobierno supremo por medio del

the cases to which this Convention refers.

ARTICLE II.

The Consuls appointed by one of the contracting parties to reside in the ports or places of the other, shall present to the Government of the Republic in which they are to reside, their letters patent or Commission, in order that they may receive the proper *exequatur* if it be deemed expedient to give it, which shall be granted without any charge; and this *exequatur* when obtained, is to be exhibited to the chief authorities of the place in which the Consul is to exercise his functions, in order that they may cause him to be recognized in his character, and that he may be sustained in his proper prerogatives, in his respective Consular district. The government receiving the Consul, may withdraw the *exequatur* or his Consular Commission, whenever it may judge proper to do so, but in such case shall state a reasonable ground for the proceeding.

ARTICLE III.

The Consuls admitted in either Republic may exercise in their respective districts the following functions.

1. They may apply directly to the authorities of the district in which they reside, and they may in case of necessity have recourse

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agente diplomatico de su nacion, si lo hubiere, ó directamente en caso contrario, reclamando contra cualquiera infraccion de los tratados de comercio que se cometa por las autoridades i empleados del pais, con perjuicio del comercio de la nacion á que el Cónsul sirva.

2ª Dirijirse á las autoridades del distrito consular i en caso necesario ocurrir al Gobierno supremo por medio del respectivo ajente diplomatico, si lo hubiere, ó directamente en caso contrario, contra cualquiera abuso que los empleados ó autoridades del pais cometan contra individuos de la nacion á que sirva el Cónsul; i siempre que fuere necesario promover lo conveniente para que no se les niegue ó retarde la administracion de justicia i para que no sean juzgados ni penados sino por los jueces competentes i con arreglo á las leyes vijentes.

3.ª Cono defensores naturales de sus compatriotas podran presentarse á su nombre, cuando por ellos fueren solicitados ante las respectivas autoridades del pais, en los negocios en que tengan necesidad de apoyo.

to the national Government, through the diplomatic agent of their nation, if there be any, or directly if there be no such agent, in complaint against any infraction of the treaties of commerce, committed by the authorities or persons employed by them, in the Country to the injury of the commerce of the nation in whose service the Consul is engaged.

2d They may apply to the authorities of the Consular District, and in case of necessity they may have recourse to the national Government through the diplomatic agent of their nation if there be any or directly if there be no such agent, against any abuse on the part of the authorities of the country, or the persons employed by them, against individuals of their nation in whose service the Consul is engaged, and they may when necessary take such measures as may be proper to prevent justice from being denied to them or delayed, and to prevent them from being judged, or punished by any other than competent judges and agreeably to the laws in force.

3d They may as the natural defenders of their fellow countrymen, appear in their name and behalf, whenever so requested by them before the respective authorities of the place in all cases in which their support may be necessary.

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4ª Acompañar á los capitanes, contramaestres i patrones de los buques de su nacion en todo lo que tengan que hacer para el manifiesto de sus mercancias i despacho de documentos, i estar presentes en los actos en que por las autoridades, jueces, ó tribunales del pais haya de tomarse alguna declaracion á los dichos individuos i á cuales quiera otros que pertenezcan á las respectivas tripulaciones.

5ª Recibir las declaraciones, protestas i relaciones de los capitanes, contra maestres, i patrones de los buques de su nacion, por razon de averias padecidas en la mar; i las protestas que cualesquiera individuos de su nacion tengan á bien hacer sobre asuntos mercantiles. Estos documentos en copia autentica expedida por el cónsul serán admitidos en los juzgados i tribunales i tendrán el mismo valor que si hubieran sido otorgados ante los mismos jueces i tribunales.

6ª Arreglar todo lo relativo á las averias que hayan sufrido en la mar los efectos i mercancias embarcados en buques de la nacion á que sirva el cónsul, que lleguen al puerto en que este reside, siempre que no haya estipulaciones contrarias entre los armadores, los cargadores i los aseguradores. Pero si se hallaren interesados en tales averias habitantes del pais donde resida el Cónsul i que no sean de la nacion á que este sirva, toca á las autori-

4. They may accompany the Captains mates or masters of vessels of their nation, in all that they may have to do, with regard to the manifests of their merchandize, and other documents, and be present in all cases, in which the authorities Courts or Judges of the Country may have to take any declarations from the persons above mentioned or any other belonging to their respective crews.

5. They may receive depositions protests and statements from Captains mates and masters of vessels of their nation, respecting losses and injuries sustained at Sea, and protests of any individuals of their nation respecting mercantile affairs. These documents, drawn up in authentic copies certified by the Consul, shall be admitted in the Courts and offices of justice, and shall have the same validity as if they had been authenticated before the same Judges or Courts.

6. They may determine on all matters relating to injuries sustained at Sea, by effects and merchandize shipped in vessels of the nation in whose service the Consul is employed, arriving at the place of his residence, provided that there be no stipulations to the contrary between the shippers owners and insurers. But if among the persons interested in such losses and injuries, there should be inhabitants of the country where the Consul resides

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dades locales el conocer i resolver sobre dichas averias.

7ª Componer amigable i extrajudicialmente las diferencias que se susciten entre sus compatriotas sobre asuntos mercantiles, siempre que ellos quieran someterse voluntariamente á su arbitramento, en cuyo caso el documento en que conste la decision del Cónsul, autorizado por el mismo i por su canciller o secretario, tendrá toda la fuerza de un documento guarentijio otorgado con todos los requisitos necesarios para ser obligatorio á las partes interesadas.

8ª Hacer que se mantenga el debido órden interior a bordo de los buques de su nacion, i decidir en las diferencias que sobrevengan entre el capitan, los oficiales i los individuos de la tripulacion excepto cuando los desórdenes que sobrevengan á bordo puedan turbar la tranquilidad publica, ó cuando en las diferencias esten mezclados individuos que no sean de la tripulacion ó de la nacion á que pertenezca el buque, pues en este caso deberan intervenir las autoridades locales.

9ª Dirijir todas las operaciones relativas al salvamento de los buques de la nacion á que pertenezca el cónsul cuando naufraguen en las costas del distrito en que él resida. En tal caso las autoridades locales solo intervendrán para mantener el órden, dar

and not belonging to the nation, in whose service he is, the cognizance of such losses and injuries appertains, to the local authorities.

7. They may compromise amicably and out of Court, the differences arising between their fellow countrymen; provided that those persons, agree voluntarily to submit to such arbitration; in which case, the document containing the decision of the Consul authenticated by himself and by his chancellor or Secretary, shall have all the force of a notarial copy authenticated so as to render it obligatory on the interested parties.

8. They may cause proper order to be maintained, on board of vessels of their nation, and may decide on the disputes arising between the captains, the officers and the members of the crew, unless the disorders taking place on board should disturb the public tranquillity, or persons not belonging to the crew or to the nation in whose service the Consul is employed; in which case the local authorities may interfere.

9. They may direct all the operations for saving vessels of their nation which may be wrecked on the coasts of the district where the Consul resides. In such cases, the local authorities shall interfere only in order to maintain tranquillity, to give

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seguridad á los intereses salvados, i hacer que se cumplan las disposiciones que deban observarse para la entrada i salida de estos. En ausencia i hasta la llegada del Cónsul, deberán tambien dichas autoridades tomar todas las medidas necesarias para la conservacion de los efectos naufragados.

10ª Tomar posesion, formar inventarios, nombrar peritos para hacer los avaluos i proceder á la venta de los bienes muebles de los individuos de su nacion que hayan muerto en el pais de la residencia del Cónsul sin dejar executores testamentarios ni herederos forzosos. En tales diligencias procederá el Cónsul asociado de dos comerciantes nombrados por el mismo, i para la práctica de las mismas diligencias ó la entrega de los bienes ó sus productos, observará las leyes de su nacion y las órdenes que tenga de su Gobierno; pero los Consules no podran ejercer estas funciones en los Estados cuya legislacion particular no lo permita. Cuando el Cónsul no se hallare en el lugar en que haya ocurrido la muerte del individuo, las autoridades locales tomarán las providencias de su resorte para dar seguridad á los bienes de este.

11. Pedir á las autoridades locales el arresto de los marineros que deserten de los buques de la nacion á que sirva el Cónsul, exhibiendo, si fuere necesario el

security to the interests of the parties concerned, and to cause the dispositions which should be observed for the entry and export of the property, to be fulfilled. In the absence of the Consul, and until his arrival, the said authorities shall take all the measures necessary for the preservation of the effects of the wrecked vessel.

10. They may take possession, make inventories, appoint appraisers to estimate the value of articles and proceed to the sale of the moveable property of individuals of their nation who may die in the country where the Consul resides, without leaving executors appointed by their will or heirs at law. In all such proceedings, the Consul shall act in conjunction with two merchants chosen by himself, for drawing up the said papers or delivering the property or the produce of its sale, observing the laws of his country and the orders which he may receive from his own Government; but Consuls shall not discharge these functions in those States whose peculiar legislation may not allow it. Whensoever there is no Consul in the place where the death occurs, the local authorities shall take all the precautions in their power to secure the property of the deceased.

11. They may demand from the local authorities the arrest of seamen deserting from the vessels of the nation in whose service the Consul is employed, exhibit-

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registro del buque, el rol de la tripulacion, ú otro documento oficial que justifique la demanda. Las dichas autoridades darán las providencias de su competencia para la persecucion, aprehension i arresto de aquellos desertores, i los pondrán á disposicion del Cónsul; pero si el buque á que pertenezcan hubiere salido i no se presantase ocasion para hacerlos partir, se mantendran en arresto, á expensas del Cónsul, hasta por dos meses, i si cumplido este termino no se hubieren remitido, serán puestos en libertad por las autoridades respectivas, i no podrán ser nuevamente arrestados por la misma causa.

12ª Dar los documentos necesarios para la comunicacion entre los dos paises i visar los que se hubieren dado por las autoridades. Dar patentes de sanidad en casos necesarios, á los buques que se dirijan del puerto en que el cónsul resida á los puertos de la nacion á que el Cónsul pertenezca: certificar sus facturas, el rol de la tripulacion, i demas documentos necesarios para su comercio i navegacion.

13° Nombrar un canciller ó Secretario cuando no lo tenga el consulado i sea necesario para autorizar sus actos.

14ª Nombrar ajentes de comercio para prestar todos los buenos

ing, if necessary, the register of the vessel, her muster roll, and any other official document in support of this demand. The said authorities shall take such measures as may be in their power, for the discovery and arrest of such deserters, and shall place them at the disposition of the Consul, but if the vessel to which they belong shall have sailed, and no opportunity for sending them away should occur they shall be kept in arrest, at the expense of the Consul for two months; and if at the expiration of that time, they should not have been sent away, they shall be set at liberty by the respective authorities and cannot again be arrested for the same cause.

12. They may give such documents as may be necessary for the intercourse between the two countries and countersign those which may have been given by the authorities. They may also give bills of health, if necessary, to vessels sailing from the port where the Consul resides to the ports of the nation to which he belongs; they may also certify invoices, muster rolls, and other papers, necessary for the commerce and navigation of vessels.

13. They may appoint a chancellor or Secretary, whensoever the Consulate has none, and one is required for authenticating documents.

14. They may appoint Commercial agents, to employ all the

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oficios que esten á su alcance á los individuos de la nacion á quien sirva, i para desempeñar las comisiones que el Cónsul tenga á bien confiarles fuera del lugar de su residencia, bien entendido que estos ajentes no gozarán de las prerogativas que se conceden á los Cónsules, sino solo de las peculiares á los agentes comerciales.

means in their power, in behalf of individuals of the nation in whose service the Consul is, and for executing the Commissions which the Consul may think proper to entrust to them out of the place of his residence; provided however, that such agents are not to enjoy the prerogatives conceded to Consuls,—but only those which are peculiar to commercial agents.

ARTICULO 4º

Los Cónsules de una de las Repúblicas contratantes residentes en otra nacion podrán hacer uso de sus buenos oficios en favor de los individuos de la otra Republica que no tuvieren Cónsules en el mismo lugar.

ARTICLE IV.

The Consuls of one of the contracting Republics residing in another country may employ their good offices in favor of individuals of the other Republic which has no Consul in that country.

ARTICULO 5º

Las Repúblicas contratantes no reconocen en los cónsules caracter diplomático, i por lo mismo no gozarán en ellas las inmunidades concedidas á los ajentes públicos acreditados con aquel caracter; pero para que dichos cónsules puedan ejercer espeditamente las funciones que les corresponden, gozarán las siguientes prerogativas:

1ª Los archivos i papeles de los Consulados serán inviolables i no podran ser ocupados por ningun funcionario del pais en que se hallan.

2ª Los Consules, en todo lo que sea exclusivamente relativo al ejercicio de sus funciones, serán

ARTICLE V.

The Contracting Republics recognize no diplomatic character in Consuls, for which reason, they will not enjoy in either country the immunities granted to public agents accredited in that character; but in order that the said Consuls may exercise their proper functions without difficulty or delay, they shall enjoy the following prerogatives.

1. The archives and papers of the Consulate shall be inviolable and cannot be seized by any functionary of the country in which they may be.

2. Consuls, in all that exclusively concerns the exercise of their functions, shall be inde-

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independientes del Estado en cuyo territorio residan.

3ª Los Consules, sus cancilleres ó secretarios, estarán exentos de todo servicio publico, de contribuciones personales i de las extraordinarias que se impongan en el pais de su residencia. Esta exencion no comprende á los Consules i sus cancilleres ó Secretarios que sean nacionales del pais en que residan.

4ª Siempre que sea necesaria la asistencia de los Cónsules en los tribunales ó juzgados, se les citará por escrito.

5ª A fin de que las habitaciones de los Cónsules sean facil i jeneralmente conocidas para la conveniencia de los que tengan que ocurrir á ellos, les será permitido enarbolar en ellas la bandera i poner sobre sus puertas el escudo de armas de la nacion á que sirve el Cónsul, con una inscripcion que esprese el empleo que ejerce; pero estas insignias no suponen derecho de asilo, ni sustraen la casa ó sus habitantes á las perquisas que los magistrados del pais podrán hacer en ellas lo mismo que en las casas de los demas habitantes en los casos determinados por las leyes.

pendent of the State in whose territory they reside.

3. The Consuls and their Chancellors or Secretaries, shall be exempt from all public service and from contributions personal and extraordinary imposed in the country where they reside. This exemption does not comprehend the Consuls or their Chancellors or Secretaries who may be natives of the country in which they reside.

4. Whenever the presence of Consuls may be required in Courts or offices of Justice, they shall be summoned in writing.

5. In order that the dwellings of Consuls may be easily and generally known, for the convenience of those who may have to resort to them, they shall be allowed to hoist on them the flag and to place over their doors the coat of arms of the nation in whose service the Consul may be, with an inscription expressing the functions discharged by him; but those insignia shall not be considered as importing a right of asylum, nor as placing the house or its inhabitants beyond the authority of the magistrates who may think proper to search them, and who shall have that right in regard to them in the same manner as with regard to the houses of the other inhabitants in the cases prescribed by the laws.

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ARTICULO 6.

Las personas i casas de los Consules estarán sometidas á las leyes i autoridades del pais, en todo aquello que no se les haya concedido una expresa exencion por esta Convencion, i de la misma manera que lo esten los demas habitantes.

ARTICULO 7.

Los Consules no darán pasaporte á ninguno individuo de su nacion ó que se dirija á ella, que tenga que responder ante alguna de las autoridades, juzgados ó tribunales del pais, por delito ó falta que hubiere cometido ó por demanda que hubiese sido legalmente admitida, siempre que se haya dado al Consul el aviso correspondiente i cuidarán de que los buques de su nacion no quebranten la neutralidad cuando la nacion en que el Consul resida se halle en guerra con otra.

ARTICULO 8.

La presente Convencion será ratificada por los Gobiernos de las Republicas contratantes i los instrumentos de ratificacion serán cangeados en Bogotá en el termino de diez y ocho meses contados desde esta fecha ó antes si fuere posible.

ARTICULO 9.

La presente Convencion obligará á las partes contra antes mientras que permanezca vijente

ARTICLE VI.

The persons and dwellings of Consuls shall be subject to the laws and authorities of the country in all cases in which they have not received a special exemption by this Convention, and in the same manner as the other inhabitants.

ARTICLE VII.

Consuls shall not give passports to any individual of their nation or going to their nation who may be held to answer before any authority, Court or Judge of the country for delinquencies committed by them or for a demand which may have been legally acknowledged provided that in each case proper notice thereof shall have been given to the Consul; and they shall see that the vessels of their nation do not infringe the rules of neutrality when the nation in which the Consul resides is at war with another nation.

ARTICLE VIII

The present Convention shall be ratified by the Governments of the two contracting Republics and the ratifications shall be exchanged at Bogotá, within the term of eighteen months counted from this date, or sooner if possible.

ARTICLE IX.

The present Convention shall be binding upon the contracting parties so long as the Treaty[1] of

[1] Document 125.

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el Tratado[1] de Paz, Amistad, Navegacion i Comercio entre la Nueva Granada i los Estados Unidos, cangeado en Washington el diez de Junio de mil ochocientos cuarenta i ocho.

En fé de lo cual, nosotros los Plenipotenciarios de las Republicas de Nueva Granada i de los Estados Unidos, firmamos el presente i lo sellamos con nuestros respectivos sellos en Washington, el dia cuatro de Mayo, del año del Señor, mil ochocientos i cincuenta.

RAFAEL RIVAS [Seal]
JOHN M. CLAYTON [Seal]

Peace, Friendship, Navigation and Commerce between the United States and New Granada, the ratifications of which were exchanged at Washington on the tenth of June, one thousand eight hundred and forty eight, shall remain in force.

In faith whereof, we, the Plenipotentiaries of the United States and of New Granada have signed the present and have affixed to it our respective seals at Washington, the fourth day of May, in the year of our Lord, one thousand eight hundred and fifty.

JOHN M. CLAYTON [Sea]]
RAFAEL RIVAS [Seal]

NOTES

In the original of this convention in the treaty file the Spanish version is written on the left pages and the English on the right; apart from the order of the languages, the *alternat* is not observed in the heading and preamble, where New Granada is named first in both versions, but is in Article 9, in the testimonium clause, and in the order of signature.

Other documents in the file, in customary form, are the duplicate United States instrument of ratification of November 14, 1850, wherein the date of the convention is erroneously stated as June 10, 1850; the certificate of the exchange of ratifications at Bogotá on October 30, 1851, written in English and Spanish; and the original proclamation of December 5, 1851. The instrument of ratification on the part of New Granada, dated October 30, 1851, and beautifully engrossed, includes the text of the convention in Spanish and English, with the Spanish written on the left pages. In the heading and preamble of both versions, New Granada is named first; but in Article 9, in the testimonium clause, and in the order of the signatures, the *alternat* is observed.

The file lacks the attested resolution of the Senate of September 24, 1850, which is bound in D.S., Miscellaneous Letters, September 1850, and is in simple form (Executive Journal, VIII, 246–47).

It seems that no papers accompanied this convention when it was submitted to the Senate with the presidential message of May 6, 1850 (*ibid.*, 173, 174).

[1] Document 125.

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Following the title of this convention is the invocation, "In the name of the Most Holy Trinity". The notes to the treaty of July 4, 1827, with Sweden and Norway (Document 55), contain some observations regarding the use of that phrase.

The Full Powers

In this case it appears that the original full powers were exchanged; that given by the Government of New Granada to Rafael Rívas, Chargé d'Affaires at Washington, dated June 28, 1849, is in the treaty file, reading as follows (translation):

President of the Republic of New Granada

To all who may see these presents, Greeting!

As it is advisable that the functions and prerogatives of the consuls, vice consuls, and other commercial agents whom the Republic of New Granada and that of the United States may reciprocally send to each other be precisely established; and as I consider the conclusion of the special convention referred to in Article 34 of the treaty concluded between the two Republics on December 12, 1846 [Document 125], adequate for this purpose; I have decided to confer and do confer on citizen Rafael Rívas full powers and all manner of authority to negotiate, conclude, and sign the said special convention with the Plenipotentiary whom the Government of the United States may appoint for this purpose.

In faith whereof I issue to him these presents, signed by my hand, sealed with the seal of the Republic, and countersigned by the Secretary
[Seal] of State for the Department of Foreign Relations, at Bogotá on the twenty-eighth day of the month of June in the year of the Lord one thousand eight hundred and forty-nine.

The President of the Republic:
J Hilº Lopez

The Secretary of Foreign Relations:
Victº de D. Paredes

The full power of Secretary of State Clayton was dated March 1, 1850, and is in this form (D.S., 3 Credences, 337):

Zachary Taylor President of the United States of America

To all to whom these presents shall come Greeting:

Know ye. That for the purpose of confirming between the United States and the Republic of New Granada perfect harmony and good correspondence, I have invested John M. Clayton, Secretary of State, with full power and authority and also with general and special command to meet and confer with Señor Don Rafael Rivas, accredited as Chargé d'Affaires of New Granada to this Government, and with him to agree, treat, consult and negotiate of and concerning the powers and immunities of the Consuls and vice consuls of the United States in New Granada and of New Granada in the United States and all matters and things connected therewith, and to conclude and sign a convention touching the premises for my final ratification, with the advice and consent of the Senate of the United States, if such advice and consent be given.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed. Given under my hand at the city of Washington,
(seal) the first day of March, in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States, the seventy fourth.

Z. Taylor

By the President
John M. Clayton
Secretary of State.

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Also in the treaty file is the full power to exchange the ratifications, dated October 23, 1851, given by the Government of New Granada to Victoriano de Diego Paredes, then Secretary of Foreign Relations and subsequently Chargé d'Affaires at Washington; the power for the exchange given to Yelverton P. King, who was commissioned Chargé d'Affaires at Bogotá on March 12, 1851, was in customary form, countersigned by William S. Derrick, Acting Secretary of State, and dated April 21, 1851; the date of signature of the convention is therein erroneously given as June 10, 1850 (D.S., 3 Credences, 400).

The Negotiations

In his note of January 2, 1850, the Chargé d'Affaires of New Granada, Rafael Rívas, proposed the negotiation of a consular convention pursuant to the engagement of Article 34 of the treaty of December 12, 1846 (Document 125), and stated that he had received the necessary instructions and full powers (D.S., 2 Notes from the Colombian Legation); Secretary of State Clayton wrote in response that the President had empowered him to enter upon the negotiation and requested that a project of the articles desired be communicated (D.S., 6 Notes to the Colombian Legation, 18, March 2, 1850); such a project was sent with the note of Rívas of the following March 6 (D.S., 2 Notes from the Colombian Legation).

That project (written in Spanish), consisting of a preamble, eight articles, and testimonium clause, was the basis of the convention; in very large part the Spanish version thereof is exactly the same in wording. The only important differences between the two texts will be stated.

Besides Article 9 of the convention, the additions to the draft are: two phrases of Article 2, namely, "which shall be granted without any charge" and "but in such case shall state a reasonable ground for the proceeding"; the words of clause 8 of Article 3, "to the crew or"; the phrase of clause 10 of Article 3 which reads "but Consuls shall not discharge these functions in those States whose peculiar legislation may not allow it"; and the words in clause 14 of the same article, "but only those which are peculiar to commercial agents". The first sentence of clause 12 of Article 3 reads in the project (translation), "They may give passports or countersign those already given to persons leaving the port in which the consul resides for those of the nation in whose service he is". In Article 4, "good offices" in the convention reads "powers" ("atribuciones") in the draft. Clause 5 of Article 5 of the project (clause 4 of that article of the convention) reads thus (translation):

> In receiving judicial declarations from consuls, the respective judges shall proceed to the dwellings of such consuls, after previously notifying them by a courteous message; and whenever their presence may be required in courts or offices of justice, they shall be summoned in writing and shall be seated beside the judges.

In Article 5, clause 5, of the convention are the words "the coat of arms of the nation in whose service the Consul may be, with an inscrip-

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tion expressing the functions discharged by him"; in the draft this passage reads (Article 5, clause 6, translation) "a sign bearing a painted ship with an inscription denominating the nation represented by the consul"; and in Article 8 of the project, the period for the exchange of ratifications was twelve months.

Omitted from the convention were clauses of the project reading thus in translation:

ARTICLE 5

3. Consuls shall not be carried to prison for slight delinquencies on account of which there could be no grounds for apprehending that they might fly from the country in order to escape punishment. In everything connected with the mercantile operations in which the said consuls may engage, they shall be treated in all respects and without exception like the other inhabitants of the country.

ARTICLE 6

2. They shall place at the disposition of the authorities, judges, or courts of the country the individuals who may take refuge in the consular dwelling or in any merchant vessel of the nation in whose service the consul is, which may be lying in any of the ports of his consular district, whensoever they may be demanded by the said authorities, judges, or courts for having committed any crimes or delinquencies falling under their cognizance; but this duty imposed on the consuls is not to be regarded as preventing the respective authorities from proceeding themselves to seize the delinquents whensoever it may be judged necessary.

3. They shall not allow vessels of their nation to leave the port in which they reside, carrying on board individuals whom the authorities, courts, or judges of the country may have prohibited from departing, without satisfying the just demands made upon them.

ARTICLE 7

Each of the contracting Republics binds itself not to grant to the consuls of other nations whom it may receive, greater exemptions, functions, or prerogatives than are conceded by this convention to the consuls of the other contracting party.

It appears that there were conferences between the two Plenipotentiaries in which they agreed on the final text; in the archives volume last cited is an unsigned and undated draft of the protocol of one conference setting forth accepted changes in the project which correspond only in part with those finally made.

The English version of the convention follows as closely as may be the translation of the project made at the time (D.S., 2 Notes from the Colombian Legation, March 6, 1850, enclosure, translation); the rendering is by no means all that it should be; for example, the words of the preamble, "han convenido en celebrar las estipulaciones necesarias sobre la materia", have no equivalent in the English; for "intereses salvados" in clause 9 of Article 3, the English reads "interests of the parties concerned"; and in clause 14 of Article 3, for "buenos oficios" the English reads "means" instead of "good offices" as in Article 4.

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Treaty Series No. 83
10 Statutes at Large, 909–10
18 *ibid.*, pt. 2, Public Treaties, 79–80

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BRUNEI : JUNE 23, 1850

Treaty of Peace, Friendship, Commerce, and Navigation signed at Brunei June 23, 1850 (13 Shaban, A.H. 1266). Original in Malay and English.

Submitted to the Senate June 19, 1852. (Message of June 11, 1852.) Resolution of advice and consent to ratification and to the exchange of ratifications at any time prior to July 4, 1854, June 23, 1852. Ratified by the United States January 31, 1853. Ratified by Brunei July 11, 1853 (4 Shawwal, A.H. 1269). Ratifications exchanged at Brunei July 11, 1853. Proclaimed July 12, 1854.

The following six pages of Malay are a reproduction, slightly reduced in size, of pages of the original treaty; but they are here arranged in left-to-right order of pagination; thereafter is printed the English version; but see the editorial notes as to the form of the original document.

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Joseph Balestier

فدوکاشري سلطان عمر عالي شيف الدين ابن مرحوم
سلطان محمد جما العالم شرة فقيران انق مئومين يڠ ممفوپاءي
قرينة ديدلم نکري بروني شرة دڠن دئيرا تعلوقڽ شرة دڠن کتورونن
سبلا ديا دان نکري يونيتيه سنيچ ديدلم تانه امريکه سباله ديا شوده
برجنجي تمبتکن فرد ماين سحابة بر سحابة يڠ اد دري دهولو انتره
کدو فيهقڽ ايت دان نکري يونيتيه سنيچ شرة شريفدوک سلطان
بروني شرة فقيران انق مئومين شوده برجنجي اکن منوليڽکن کتنتوان
دياث دري فصل اين ديدلم شوات فرجنجي دمکين اين فرکارا

فصل يڠ فرتام — ١

فرد ماين سحابة يڠ ستياون ايت اکن ترتمبل دري ماشه اين سمفي لا انتاره
نکري يونيتيه سنيچ نکري امريکه دڠن شريفدوک يڠ مهاملیا سلطان عمر
عالي شيف الدين شرة دڠن توان فقيران انق مئومين يڠ ممفوپاءي قرينة
نکري بروني دانتاره کتورونن کدو فيهقڽ مريکه دان دانتاره سياف ٣

يڠ مڠڬنتيكن كدوا دوكن مريكه ايت دان اورڠ ٢

فصل يڠ كدوا — ٢

اورڠ نكري يونيتة ستيچ نكري امريكه ايت بولي مندافة سچوكوف ٢ كبيساشن
اكن ماشق تيڠڬل دشانه دان برنياكه فركي شرة دڠن فرنيڬاءنڽ فدا، شڬال
تمفة ٢ نكري يڠ ديدلم تعلوق شريفدوك شلطان بروني دان اورڠ نكري
يونيتة ستيچ نكري امريكه ايت بولي منريما ديدلم نكري سموات كلبيهن دان
كفتوتن دري فصل فرنيڬاءن اتو لاين ٢ فصل ٤ فدا، ماشه ستارڠ اتو فدا،
ماشه يڠ اكن دتڠ يڠ ديبريكن كفدا، اورڠ يونيتة ستيچ نكري امريكه يڠ ترلبي
دكاشيهي رعية شريفدوك شلطان بروني ايت دميكين جوڬ اكن مندفة
ڤابيساشن اكن ماشق تيڠڬل دشانه برنياكه فركي شرة دڠن فرنيڬاءنڽ
فدا، شڬال تمفة ٢ نكري يڠ تعلوق كفدا، شريفدوك شلطان بروني دان
سبيساه ٢ ٤ بكيمانه رعية لاين ٢ نكري يڠ ترلبيه دكاشيهيڽ دان اورڠ
يونيتة ستيچ بولي منريما ديدلم نكري ايت كلبيهن دان كفتوتن دري فصل
فرنيڬاءن اتو لاين ٢ فصل ٤ فدا، ماسه ستارڠ اتو ماسه يڠ اكن دتڠ يڠ ديبريكن
كفدا، اورڠ لاين ٢ نكري يڠ ترلبيه دكاشيهيڽ

فصل يڠ كتيكه — ٣

شڬال اورڠ يونيتة ستيچ نكري امريكه بولي مندفة بيبساه ممبالي اتو مپيوا
اتو منوڠڬوه اتو لاين ٢ جالن يڠ فاتوق ممفوپاءي شڬال ماچم ٢ هرتابندا

ديدلم نكري يڠ د تعلوق شريفدوك شلطان بروني دان شلطان بروني ايت اد
برجنجي شيء دڠن سبوليڽ كواشات ديدلم تعلوقڽ ايت اوڠ يونيتيه ستيچ نكري
امريكه ايت بولي منارڽ سچوكوف ٢ فليهرانڽ دان سچرا فدا ديريڽ سنديري
دان فدا هرتابندا هڽ اوڠ يونيتيه ستيچ نكري امريكه يڠ اكن تڠ ممفوباءي اتو يڠ
شوده اد ممفوباءي دهولو دريفده ترمتري فرجنجي اين

فصل يڠ كامفة — ٤

تياد شوات بارڠ ٢ اف فون اكن دلرڠكن ممباوا ماسق اتو كلوار دري نكري
شريفدوك شلطان بروني تتافي فرنيكاءن انتارا يونيتيه ستيچ نكري امريكه
ايت دڠن نكري شريفدوك شلطان بروني اكن منجادي بيباسه دان بولي دياتهاڽ
سهجا بيا يڠ اكن تڠ ترفاكي دري فصل فرنيكاءن

فصل يڠ كاليم — ٥

تيادلا بيا لبي دري شاتوريڠكيه فدا شاتوتن بولي ديچوكيكن دياتهه
كافل ٢ يونيتيه ستيچ نكري امريكه يڠ ماسق كدلم فلسوهن نكري شريفدوك شلطان
بروني دان بيا يڠ شاتوريڠكيه فدا شاتوتن اين يڠ ديچوكيكن دياتهه شتالين
كافل ٢ يونيتيه ستيچ نكري امريكه ايت ايالا فركنتي چوكي اتو بيا شتالين دان
لاكي شريفدوك شلطان بروني ايت اد برجنجي فرنيكاءن يونيتيه ستيچ نكري
امريكه اكن ترلفهه دري بيا يڠ دهولو دان لاكي ميشتي لفهه دري اوندڠ ٢
يڠ كمدين بايكهڽ دري اف سبڽ اكن ترفاكي دنكري شريفدوك شلطان

بروني ايت اکن مهروشاڽ فرنيکاءن

فصل يڠ کاانم — ٦

شريفدوک شلطان بروني ايت اد برجنجي تياد لا بيسا شوڠ فون بولي د چوکيکن
دياتسي سباکني بارڠ ٢ تتکال د کلورکن دري نکري ث بايت بارڠ ٢ يڠ تومبو اتو
تربيت اتو تربوات ديدلم نکري شلطان بروني

فصل يڠ کتوجه — ٧

شريفدوک شلطان بروني اد برجنجي ممبيرکن کافل ٢ فرڠ يونيتيه ستيچ
نکري امريکه بيباڽ ملق کدلم لبوهن اتو شوڠي ٢ اتو سيروم ديدلم تعلوق
ديا دان ممبيرکن کافل ٢ فرڠيتو ملڠکڠکن کهندقڽ بايت مکانن اتو لابن ٢
بارڠ ممبالي دڠن هرکهڽ سفاتوڠ ث

فصل يڠ کدلڠن — ٨

جيکلو سبارڠڽ کافل يڠ ديباوه بنديره يونيتيه ستيچ نکري امريکه
اکن ترشاکته دبرنتو ٢ ديدلم دبره شريفدوک شلطان بروني دان
شلطان ايت اد برجنجي ممبري سکال فرتولوڠن سبوليڽ اکن مندفتي
سبب اورڠ يڠ فوڽ دان مبرهکن کفده اورڠيتو سموت بارڠ ٢ يڠ اکن
تردفته دريفده کافل ٢ يڠ دميکين ايت مکه شريفدوک شلطان بروني
لاکي فولا برجنجي اکن ممبري فرتولوڠن فده افشير ٢ دان کلاشي ٢

دان سموات اورڠ دیدلم کافل تله ترشاکته ایت سچوکوف ۲ فلیهارڠ نث
دیاتهه دیري اورڠ ایتو سندیري دیاتهه بارڠ ۲ اورڠ ایتو

فصل یڠ کاسمبیلن — ۹

شریفدوک شلطان بروني اد برجنجي دیدلم سکال فصلڽ فدا وقتو اورڠ
یونیتیه سیچ نکري امریکه اکن ترتودوه دریفدا کشلاهن ترڽوق دیدلم دیرا
تعلوق شریفدوک شلطان بروني ایت مکه اورڠ ۲ یڠ کتودوه ایت میشتي
دیغاریقشاکن دان دحکومکن اولیه کونصل جندارل یونیتیه سیچ نکري
امریکه اتو لاین ۲ اورڠ فوتي یڠ ممکڠ فرینته دلتفکن دري سبب ایت دان
دیدلم سکال فرکالاین دان فرسیلیشهن اکن ترجادي دانترا اورڠ یونیتیه سیچ
نکري امریکه دڠن راعیة شریفدوک شلطان بروني اتو دانترا اورڠ یونیتیه
سیچ دڠن اورڠ لاین ۲ اسیڠ ۲ بڠشا دیدلم دایرا تعلوق کفدا شلطان
بروني دان کونصل یونیتیه سیچ نکري امریکه یڠ بولي ممریقشاکن دان
ممتوشکن دریفدا فرسیلیشهن یڠ ترشبوق ایت دریفدا فیهق یڠ ممرنتهکن
دسباله شریفدوک شلطان بروني اتو دهولو لمدین اتو وقتو دعوا
دان دعویه اد دفریقشاکن مکه تیادلا بولي دیامفوسیق ۲
دان بشرق اتو چمفور دیدلم فرکارا ایتو

فصل ڤوکسفولو - ١٥

فرجنجين اين بولي دلکوکن دان شوداء ترلکوايت اکن ديتوکر کن
شاتو دشمن لاين دنکري بروني ديدلم دوفولو امفة بولن داريفداء
هاري اين

ترتولے ديدلم نکري بروني فد 23 هاري بولن جون تاهون 1850
دان فدوتيک بالے هاري بولن سعاية فداء هاري احد تريح
في سنة ١٢٦٦

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His Highness Omar Ali Saifeddin ebn Marhoum Sultan Mahomed Jamalil Alam and Pañgiran Anak Mumin to whom belong the Government of the Country of Bruni and all its provinces and dependencies, for themselves and their descendants, on the one part, and the United States of America, on the other, have agreed to cement the friendship which has long and happily existed between them, by a Convention containing the following Articles.

ARTICLE 1

Peace, friendship, and good understanding shall from henceforward and for ever subsist between the United States of America and His Highness Omar Ali Saifeddin, Sultan of Borneo and their respective sucessors and Citizens and Subjects

ARTICLE 2

The Citizens of the United States of America shall have full liberty to enter into, reside in, trade with, and pass with their merchandize through all parts of the dominions of His Highness the Sultan of Borneo, and they shall enjoy therein all the privileges and advantages with respect to commerce, or otherwise, which are now or which may hereafter be granted to the Citizens or Subjects of the most favored nation: and the subjects of His Highness the Sultan of Borneo, shall in like manner be at liberty to enter into, reside in, trade with, and pass through with their merchandize through all parts of the United States of America, as freely as the citizens and subjects of the most favored nation, and they shall enjoy in the United States of America all the privileges and advantages with respect to commerce, or otherwise, which are now or which may hereafter be granted therein to the Citizens or Subjects of the most favored nation.

ARTICLE III

Citizens of the United States shall be permitted to purchase rent or occupy, or in any other legal way to acquire all kinds of property within the Dominions of His Highness the Sultan of Borneo: and His Highness engages that such Citizens of the United States of America shall, as far as lies in his power, within his dominions enjoy full and complete protection and security for themselves and for any property which they may so acquire in future, or which they may have acquired already, before the date of the present convention

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ARTICLE IV

No Article whatever shall be prohibited from being imported into or exported from the territories or His Highness the Sultan of Borneo; but the trade between the United States of America and the dominions of His Highness the Sultan of Borneo, shall be perfectly free and shall be subject only to the custom duties which may hereafter be in force in regard to such trade

ARTICLE V

No duty exceeding one dollar per registered ton shall be levied on American Vessels entering the ports of His Highness the Sultan of Borneo and this fixed duty of one dollar per ton to be levied on all American vessels shall be in lieu of all other charges or duties whatsoever. His Highness moreover engages that American trade and American goods shall be exempt from any internal duties and also from any injurious regulations which may hereafter, from whatever causes, be adopted in the dominions of the Sultan of Borneo

ARTICLE VI

His Highness the Sultan of Borneo agrees that no duty whatever shall be levied on the exportation from His Highness dominions of any article, the growth, produce, or manufacture of those dominions.

ARTICLE VII

His Highness the Sultan of Borneo engages to permit the Ships of War of the United States of America freely to enter the Ports, rivers and creeks, situate within his dominions and to allow such ships to provide themselves at a fair and moderate price, with such supplies, stores and provisions as they may from time to time stand in need of.

ARTICLE VIII

If any vessel under the American flag should be wrecked on the coast of the dominions of His Highness the Sultan of Borneo, His Highness engages to give all the assistance in his power to recover for, and to deliver over to, the owners thereof, all the property that can be saved from such vessels. His Highness further engages to extend to the officers and crew and to all other persons on board of such wrecked vessels, full protection both as to their persons and as to their property

ARTICLE IX

His Highness the Sultan of Borneo, agrees that in all cases where a citizen of the United States shall be accused of any crime committed

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in any part of His Highness' dominions the person so accused shall be exclusively tried and adjudged by the American Consul, or other officer duly appointed for that purpose, and in all cases where disputes or differences may arise between American Citizens, or between American Citizens and the subjects of His Highness or between American Citizens and the Citizens or subjects of any other foreign power, in the dominions of the Sultan of Borneo, the American Consul or other duly appointed officer shall have power to hear and decide the same without any interference, molestation or hindrance, on the part of any authority of Borneo, either before during or after the litigation.

This Treaty shall be ratified and the ratifications thereof shall be exchanged at Bruni within two years after this date

Done at the City of Bruni, on this twenty third day of June Anno Domini one thousand eight hundred and fifty and on the thirteenth day of the month Sāaban of the year of the Hegira one thousand two hundred and sixty six

NOTES

The ruler with whom this treaty was made, while styled the "Sultan of Borneo" in various articles of the English version of the treaty and elsewhere, was the Sultan of Brunei (or Bruni), a region (with a capital of the same name) on the northwest coast of the island of Borneo.

This "treaty", as it is styled in the next to final clause of the English version, or "convention", according to the preamble, was negotiated by Joseph Balestier, Special Agent and Envoy of the United States, during his mission to the Far East (1849–51).

The Despatches of Balestier

Almost all the despatches of Balestier during the course of his mission are lacking from the archives of the Department of State. Those of August 23 and November 9, 1849 (probably Nos. 1 and 2) were sent to the Senate with the report of Secretary of State Clayton of April 23, 1850 (D.S., 6 Report Book, 300–3), made in compliance with a Senate resolution of February 21, 1850 (Senate Journal, 31st Congress, 1st session, serial 548, p. 171). That report was laid before the Senate on April 25, 1850, and was referred to the Committee on Foreign Relations (*ibid.*, 308); but it appears not to have been printed. The two despatches mentioned are not in the archives of the Department of State and accordingly are not available in any form; their dates, however, show that they would not be relevant here.

Nos. 3 to 32, of various dates from November 29, 1849, to May 30, 1851, are, with their enclosures, printed in Senate Executive Document No. 38, 32d Congress, 1st session, serial 618. (That Senate document, for convenience, is hereinafter cited as "published cor-

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respondence".) There is, however, some confusion in the numbering of the despatches, for there are five without numbers, two numbered 20, and none numbered 7 or 19. None of the despatches of Balestier printed in that Senate document are in the archives of the Department of State except Nos. 24 to 27, inclusive.

There are, however, in the archives of the Navy Department (Naval Records and Library, Executive Letters, January–May 1851) some of Balestier's despatches to the Secretary of State; these, with certain enclosures thereto, were enclosures to the letter of Secretary of State Webster to Secretary of the Navy Graham dated February 4, 1851; they include No. 13 (April 30, 1850, duplicate); No. 16 (June 24, 1850, duplicate); No. 17 (July 13, 1850, copy, extracts; but in published correspondence the same "extracts" appear as the whole despatch); No. 18 (July 20, 1850, duplicate, lacking the signature); and a copy of an unnumbered despatch of July 22, 1850 (not in published correspondence).

In the presidential message of June 11, 1852, transmitting this treaty to the Senate (Executive Journal, VIII, 400), mention is made of two despatches of Balestier dated, respectively, April 22 and June 24, 1851. It appears that those two despatches were not printed at the time, and they cannot now be certainly identified. There is a despatch of April 22, 1851 (published correspondence, 118); but it deals only with accounts. Possibly the despatch of April 23, 1851, transmitting the treaty, was intended (*ibid.*, 119). The other despatch may have been that of June 24, 1850, which enclosed a copy of the treaty (*ibid.*, 85–87).

The Original Treaty

The original treaty document consists of fourteen pages—two double sheets and three single sheets—which are incorporated within and bound between the pages of the duplicate United States instrument of ratification and the original proclamation. The binding of these papers is by pink and blue ribbons which are fastened under the seal of the proclamation.

The pages of the original treaty document are not numbered (except for the last five pages, as mentioned below); but for convenience of description they are here referred to as though they were numbered in left-to-right order. In this order, pages 1 and 2 are blank; on pages 3 to 8 is written the Malay version of the treaty, but in the usual right-to-left order of Arabic writing, beginning on page 8 and ending on page 3; the seal of the Sultan of Brunei and the signature and seal of Joseph Balestier, who negotiated the treaty on the part of the United States, are at the top of page 8, preceding the preamble; page 9 is blank; on pages 10 to 14 is written the English version, which begins, however, on page 14 and ends on page 10, and which is without signature or seal. The fourteen pages of the document are all of the same size, make, and quality of paper.

It is certain that at one time the two versions of the treaty were two separate papers. The first eight pages of the treaty document, containing the Malay version, are bound by a green ribbon of three-

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eighths inch width which runs through a slit in the gutter margin of those pages near the top and around the fold of the sheets, and which is tied in a loose loop; immediately below this loop, the ends of the binding ribbon are embedded in the red-wax seal of Balestier; that seal was originally affixed to the paper of page 8, as may be clearly seen, but it has since been torn loose and now hangs at the end of the loop of ribbon; but that single loop of the ribbon which binds the eight sheets and has its ends embedded in the seal has not been opened or broken since that seal was affixed.

The last six pages of the treaty document, which for convenience have been called pages 9 to 14, contain the English version. The most striking feature of these pages is the fact that those of them on which the English is written are now arranged in right-to-left order, beginning with page 14 and ending with page 10. It is clear, however, that this is not the first arrangement of those pages; they are single sheets, the outside edges of which are irregularly cut, showing that they are halves of double sheets separated at what are now the outside edges; and in the upper, inner corners of pages 10 to 14, almost concealed by the present binding, are penciled page numbers from 5 to 1, page 14 in the present order being numbered 1.

Thus the pages now called 9 to 14 were formerly in reverse order, with what are now the outer edges of the pages the inner or binding edges; page 14 was page 1, page 13 was page 2, etc.

It is to be said that besides the ribbons which have been mentioned, there is another binding ribbon of green color, one-eighth inch in width, which runs through the fourteen pages of the treaty document, thus holding together the Malay and the English versions; but this ribbon, crudely threaded and knotted and not sealed, is of a later period than that of the treaty.

Without going further into the minutiae of the matter, which involve the creases of the pages, the yellowing and wear of certain pages, and the smudges from the soft black ink of the seal of the Sultan, the following conclusions are deemed questionless: The two versions of the treaty, the Malay and the English, while written at the same time, were at the beginning separate papers, the Malay version in its present arrangement and the English in the normal left-to-right order. Each of the two papers was folded in the same fashion, but separately, and each with a blank page as the outside. Later the two papers were folded together, the English version, in its proper order, following the Malay. In all probability it was in this last state that the papers reached Washington. The disarray of the pages of the English version was a subsequent happening, conceivably accomplished because of an illogical idea that it was logical to have the English script correspond in right-to-left order with the Malay.

It might be inferred from the presidential message of June 11, 1852, transmitting the treaty to the Senate (Executive Journal, VIII, 400; quoted below), that the original treaty document had been brought to the United States by Balestier and that it had not been earlier submitted to the Senate because of his delay in arrival. The facts, however, seem to be otherwise. Balestier arrived in the United States

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prior to November 25, 1851. His report written at Washington is of that date (D.S., 18 Special Agents; printed in published correspondence, 3–24); moreover, Balestier did not bring the original treaty with him; he enclosed it with his despatch No. 31 from Batavia, of April 23, 1851, where it is spoken of as the "original document" (*ibid.*, 119); and in the report of Secretary of State Webster to the President of (about) January 16, 1852, it is expressly stated that the treaty was despatched to the United States "by *mail*" (D.S., 6 Report Book, 393–94). As the original of the despatch of Balestier of April 23, 1851, is lacking, there is now no indication available as to when it and the treaty document enclosed were received at Washington.

THE ORIGINAL TEXT

It is not to be doubted that the Malay and the English versions are together to be deemed the original text, although the despatches and letters of Balestier contain nothing that can be regarded as wholly conclusive on the point.

In his despatch No. 16, of June 24, 1850 (published correspondence, 85–86), Balestier writes of retaining the "Malay and annexed copy in English, of the treaty", but with that despatch was enclosed a copy of the treaty which had been concluded "in the Malay and English languages"; and that enclosure as it is printed (*ibid.*, 86–87) does not purport to be a translation and is headed "Signed: JOSEPH BALESTIER—Sultan OMAR ALI, &c., &c., &c. [Seal.]"; but the duplicate of that despatch which is No. 16 in the archives of the Navy Department (cited above) speaks of the document retained as "The original treaty in the Malay language with the English version annexed to it"; and the copy of the treaty, seemingly in Balestier's handwriting, which is bound immediately preceding that duplicate of despatch No. 16 (and which perhaps was with it) is in English only, with the words "Signed Joseph Balestier" and indication of the "Sultan's Seal" just above the preamble. Balestier wrote to Commodore Voorhees "to communicate . . . the treaty (which you will be pleased to find here enclosed) which I have concluded and signed" (*ibid.*, 89, June 25, 1850); but there is nothing to show definitely the form of the enclosure. With his letter of June 25, 1850 (*ibid.*, 89–90), Balestier sent a copy of the treaty to Francis Motley, whom he had appointed commercial agent of the United States. That copy was doubtless also in English. The report made by Balestier of his mission, dated at Washington November 25, 1851, so far as it deals with this treaty, says nothing about its language (*ibid.*, 17–18).

In the duplicate United States instrument of ratification (quoted below), the Malay version is plainly spoken of as the original; for that instrument includes the words, "the original of which Convention, with an English translation"; such was doubtless the view of the Department of State at the time. The original proclamation of July 12, 1854, speaks merely of the original of the convention as being "hereto annexed"; but in the proclamation as printed in 10 Statutes at Large, 909–10, no mention is made of a Malay version at all; after the words "which Convention is word for word as follows"

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appears the English version. The editorial liberties taken with the English version as printed in the Statutes at Large are mentioned below.

Notwithstanding the wording of the duplicate United States instrument of ratification, however, the English version is clearly to be deemed one of the two versions of the original text. The comments of Professor C. Snouck Hurgronje, which appear below, are conclusive. The English version was primary, and the Malay was written as a translation of the English.

It is also to be mentioned that the nine articles of this treaty are the same, *mutatis mutandis*, as Articles 1 to 8 and the additional article of the "Treaty of Friendship and Commerce, and for the Suppression of the Slave Trade, between Great Britain and Borneo", of May 27, 1847 (British and Foreign State Papers, XXXV, 14–17), which is stated to have been signed in the English and Malay languages.

THE ENGLISH VERSION

The English version printed above has been collated with that of the original treaty document. Accordingly, it includes neither signature nor seal, for, as has been mentioned, the signature of Balestier, his seal, and the seal of the Sultan of Brunei each appear only once in the original treaty document, at the head of the Malay version.

In the Statutes at Large prints (both that in 10 Statutes at Large, 909–10, and that in 18 *ibid.*, pt. 2, Public Treaties, 79–80) there appear not only the signature of Joseph Balestier but also the signature of "Omar Ali Saifeddin". The latter signature as such does not appear on the original treaty document at all. The seal of the Sultan of Brunei was his signature. The common law had an analogous rule (Blackstone, Commentaries, 1st ed., II, 305–6).

Moreover, as printed in the Statutes at Large the next to the last clause of the treaty reads:

> This treaty shall be ratified, and the ratifications thereof shall be exchanged at Bruni at any time prior to the fourth day of July, in the year one thousand eight hundred and fifty-four.

It will be seen that the English version of the treaty in the original document has for the final words of that clause, "within two years after this date". The wording in the Statutes at Large is evidently an editorial incorporation as an amendment of so much of the Senate resolution of June 23, 1852, as consented to the exchange of ratifications at any time prior to July 4, 1854; but that Senate resolution did not, and did not purport to, amend the text at all.

The date of the signature of the treaty is given in both calendars as June 23, 1850, and 13 Shaban, A.H. 1266. According to the chronological tables, the equivalent of the date in the Mohammedan calendar given would be June 24, 1850; but as to dates stated in terms of the Mohammedan calendar, see volume 2, xxi–xxii. It may be mentioned that June 23, 1850, fell on Sunday.

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THE MALAY VERSION

The late Professor C. Snouck Hurgronje, of Leiden, in letters to the editor of these volumes, was good enough to comment on the various papers of this treaty. Regarding the Malay version, Professor Snouck Hurgronje wrote:

The Malay translation of the treaty, although being a fair attempt to render the meaning of the English original, is rather poorly done. Thus in Article 2 the translator has entirely failed to express the reciprocity of the conceded rights; instead of that he repeats, almost in the same wording, the enumeration of the rights which American citizens are to enjoy in the Sultanate of Brunei. As there appears no trace of an intention to alter the meaning of the original, it is not worth while to point out other inaccuracies evidently due to ignorance only.

The date of the Malay translation of the treaty runs thus: "Written in the country (or town) of Brunei on the 23d day of the month of June of the year 1850 and on the thirteenth day of the month of Sa'abat [*sic*] on Sunday in the year 1266."

THE INSTRUCTIONS

On August 16, 1849, Joseph Balestier, who had been consul at Singapore, was designated Special Agent and Envoy of the United States (D.S., 2 Communications to Foreign Sovereigns and States, 118) and was given instructions to proceed to Cochinchina, Siam, Borneo, and regions adjacent thereto (D.S., 1 Special Missions, 292–301); relevant excerpts from those instructions follow:

The President, reposing full confidence in your integrity, prudence, and abilities and believing it to be of great importance to the safety, and interests of our citizens, and commerce, to send an Envoy to the East Indies, has selected you for that object, and has appointed you Special Agent of the United States to proceed, without delay, to Cochin China, (or Anam,) and afterwards to other parts of South Eastern Asia, for purposes and objects which will be described in the following instructions. Some of the duties, to be devolved on you are of a delicate, and all, of them, of an important nature. Your long official residence in the East, during which your duties have been discharged with signal fidelity and success: and your familiar acquaintance with the manners and customs and the trade and commerce of oriental countries, have led to your present appointment, and give assurance that the duties will be satisfactorily executed.

. . . . . .

You will proceed as expeditiously as practicable, to England, and from thence by Steam overland route to China; or, to the station where you will find our East India Squadron, and deliver, to the Commander, the accompanying letter, from the Secretary of the Navy directing him to take you on board and to convey you to such port or ports, in Cochin China, as you may designate: and afterwards, to such other places, in South Eastern Asia, as your instructions will require you to visit.

. . . . . .

The Island of Borneo has of late attracted a great deal of notice on account of the successful efforts, made from some of its principal ports, to extirpate piracy in the China, and other neighbouring seas, and, likewise, on account of the abundant deposits of fossil coal, suitable for the purposes of Steam Navigation, at Labuan, Sarrawack, and in other districts on the coast of that Island—and as the other natural resources of the country are beginning to be opened, it cannot be long before the enterprising spirit of our countrymen will be drawn to them and this renders it desirable, to have them placed on the most favorable footing. You will therefore, visit, Bruni, the native capital, Labuan, a recently acquired British settlement, and Sarawack, a native state, the Radjah of which, Sir James Brooke, has evinced every disposition to foster domestic and foreign commerce. With the sultan of Bruni and Radjah Brooke, you will if you deem

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it expedient and advantageous endeavor to conclude treaties of amity and commerce. Letters of Credence and Full powers, for these objects, are herewith transmitted.

From Borneo, you will turn your attention to the adjoining Island of Subi, one of the north Natunas groupe, upon which the ship Mary Ellen, of Boston was cast away, in 1846, on her passage from China to the United States. Her commander and crew were received and entertained by the Rajah with great kindness and hospitality, and at no little inconvenience and expense sent by him, in safety, to our Consul at Singapore. The President highly gratified by this act of humanity and kindness, desires you to convey to the Rajah his cordial acknowledgments, and, as a slight token of his esteem, has directed certain presents to be put under your charge to be delivered to the Rajah, in the Presidents name.

. . . . . .

The foregoing instructions are not to be construed as absolutely requiring you to visit the places referred to in the order therein mentioned. You may pursue a different route if circumstances should in your opinion render it expedient.

From the limited sphere in which you are called upon to operate, and the narrow compass within which the places, you are desired to visit, lie, it is presumed that a period of six months, from the day you embark on board the flag ship, will be amply sufficient to enable you to execute the objects of your mission, when this shall have been done, the Commander will be directed, to land you at Singapore, where it is understood, to be your intention to remain until Congress shall decide whether your Consulate is to be put upon the footing, which will be recommended by this Department, at its next session. If however, you shall succeed in concluding a Treaty or Treaties, under these instructions, you will be expected, of course, to return with it or them to the United States.

If you shall succeed in effecting favorable treaties, you may promise, either verbally, or in in writing, that the usual presents shall be made on the exchange of ratifications, and you will take occasion to explain that every thing, you may agree upon will be subject to the approval of the President, and to the advice and consent of the Senate of the United States. It is believed that Congress would not hesitate to appropriate a modest and reasonable sum for the presents which are customary, in Eastern countries, on such occasions; It would be very agreeable, however, to the President, if you could induce the powers, with which you treat, to waive this ceremony, so repugnant to our feelings, and so much at variance with the practice of civilized, and Christian nations.

You will write to the Department as often as good opportunities may occur, and keep the Government constantly advised of your movements, communicating detailed information upon all subjects of interest to the trade and commerce of the United States, and furnishing suggestions, from your large experience and observation, by which that trade and commerce may be augmented, and, at the same time, rendered secure. You will also be expected to keep a full and exact Journal of your proceedings, to be filed among the records of the Department, which may be published, in whole, or in part, or communicated to Congress, if it shall be deemed advisable so to do. It is scarcely necessary to caution you against the publication, either abroad, or at home, of any portion of your proceedings, without the previous sanction and assent of this Department.

In all cases, where, in your judgment, it may be proper, and may be expected, in conformity with usage, to make presents, (of the propriety and necessity of which your knowledge of the countries you are to visit, will make you a competent judge,) you will communicate your opinion to the Department, and where you think it reasonable, or becoming, that presents should be sent, you will please state what articles would be likely to prove acceptable, without requiring any large expenditure of money in their purchase.

The mission of Balestier was only in small part successful; this treaty with the Sultan of Brunei was the sole treaty that he negotiated (see Wriston, Executive Agents in American Foreign Relations, 344–46, 656–59; Dennett, Americans in Eastern Asia, 350).

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The Negotiations

The full power given to Balestier to negotiate with the Sultan of Brunei was of the same date as his instructions and in the following form (D.S., 3 Credences, 320):

Zachary Taylor President of the United States of America.

To all to whom these presents shall come:

Know Ye, that reposing special trust and confidence in the integrity, prudence and abilities of Joseph Balestier, a citizen of these United States, I have invested him with full power, for and in the name of the United States, to meet and confer with any person or persons, furnished with like powers on the part of His Royal Highness, the Sultan of Bruni, and with him or them, to negotiate, conclude and sign, a Convention or Conventions, Treaty or Treaties, of and concerning the friendship, commerce and navigation of the two Countries, and all matters and subjects connected therewith, which may be interesting to the two nations: submitting the same to the President of the United States, for his final ratification, by and with the advice and consent of the Senate of the United States.

In testimony whereof I have caused the seal of the United States to be hereunto affixed.

(LS) Given under my hand, at the City of Washington, the sixteenth day of August, in the Year of our Lord One thousand, eight hundred and forty nine.

Z Taylor

By the President:
John M Clayton
Secretary of State.

That the Plenipotentiary of the Sultan of Brunei had formal authority in the nature of a full power, appears from the report of Balestier regarding his mission, which is dated at Washington November 25, 1851 (published correspondence, 3–24), and which, so far as relevant, follows:

From Subi, which we left on the 21st [of May, 1850], the Plymouth next proceeded to and arrived off the river of Sarawak, on the southwestern side of Borneo, the Rajarate of his Highness Sir James Brooke, whom I found absent on account of ill-health; but the officers in charge of the government, as you will be pleased to observe by my correspondence with them, accompanying my letter No. 15, expressed their gratification at receiving so flattering a mark of attention from the President of the United States, and their belief that the rajah will very readily enter into a convention of friendship and trade with us, on a liberal footing.

Subsequently, in correspondence with his Highness Rajah Brooke, we agreed on the terms of the treaty which I perfected with his Highness the Sultan of Bruni, as the basis of a convention, which the voyage which the rajah was forced to make to Europe for the recovery of his health prevented being finished, but which at no distant day he will come to complete in this country, according to a letter which I have recently received from him.

Under the mild and equitable government of the rajah, an active native population is fast assembling there, devoting themselves to agriculture and trade, and other peaceful pursuits, in place of the roving and piratical lives they so recently led on shore and on the sea; and the trade of that place is greatly on the increase.

Sailing from Sarawak on the 28th, the Plymouth anchored off the British island of Labuan, on the 7th of May [June]. Sir James Brooke, the governor of the island, being absent from Borneo, as already stated, I found on landing that he had requested those in charge of the government to give me every aid and assistance in my negotiations with the Sultan of Bruni, or Borneo proper, whose dominions extend over a very considerable part of that vast island, the capital of which is Bruni, lying up a broad and deep river, about thirty miles

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inland. Having obtained a Malay writer, I left the Plymouth, as at Sarawak, in one of her boats, accompanied, as on the first occasion, by Acting Lieutenant John Lee Davis, and Mr. Wirt, Commodore Voorhees' secretary, unofficially. Intelligence of my coming having been received, I was met by numerous state barges containing officers of high rank, who manifested great joy at the honor done to their country by the President, in sending an envoy to their Sultan.

Arrangements having been made for a royal reception, on the day following my arrival, I was led, together with the gentlemen who accompanied me, to the great hall of reception, on entering which, a salute was fired.

I found the Sultan and the principal officers of state assembled, and to whom I was formally presented. On presenting to the Sultan the President's letter, and on his breaking the seal, another salute was fired in acknowledgment of the great honor conferred on him. I then took occasion to explain to his Highness that the object of my mission was one of friendship and peace, and an endeavor on the part of my government to enter into close friendly and commercial relations with his states, now that happily the pirates and freebooters who for years had interrupted commerce in the neighboring seas had been extirpated or put down. And with this friendly object, I was instructed to invite him to enter into negotiations, which I hoped would terminate in a convention of friendship and commerce mutually advantageous to the two countries.

The Sultan immediately replied, that as he felt the advantages of friendship and trade with the United States, he was perfectly ready to appoint one or more of his ministers to negotiate with me, and he hoped to a good purpose.

Accordingly on the same day, after the audience, I was called upon by Prince Makota, one of the most enlightened officers of the court, who brought me a letter from the Sultan to the effect, that he had the proper authority delegated to him to treat with me. For greater personal convenience we agreed to go to Labuan, where, after conferences for two or three days, the articles of a convention were agreed upon, and are in substance as follows:

Article first declares the mutual desire of myself, in behalf of the United States, and of Omir Ali Saiffeden ebu Marhoun Mahomed Jamalil Alam, Sultan of Borneo, to enter into bonds of friendship and commerce, and for this object we have agreed and signed the following articles of convention.

Article second, that the citizens of the United States shall be at liberty to enter into, reside in, trade with, and pass with their merchandise through all parts of the dominions of his Highness the Sultan of Borneo, and shall enjoy therein all the privileges and advantages with respect to commerce or otherwise, which are now, or which may hereafter be granted to the citizens or subjects of other nations; and the same advantages are extended likewise to the subjects of his Highness in the United States.

Article third permits to the citizens of the United States to purchase, rent, or occupy, or in any other legal way to acquire, all kinds of property within the Sultan's dominions; and his Highness engages that such citizens shall, as far as lies in his power, enjoy full and complete protection and security for themselves and property, which they may acquire in future, or which they may have already acquired before the date of this convention.

Article fourth stipulates that no article whatever shall be prohibited into or exported from his Highness's dominions, but the trade between the United States and his dominions shall be perfectly free, and subject only to the custom duties which may hereafter be in force in regard to such trade.

Article fifth stipulates, likewise, that a duty not to exceed one dollar per register ton shall be levied on American vessels entering the ports of his Highness, and this fixed duty of one dollar per ton shall be in lieu of all other charges whatever; engages that American trade and American goods shall be exempted from any internal duties, and also from any injurious regulations which may hereafter, from whatever causes, be adopted in his Highness's dominions.

Article sixth exempts from all duties whatever, all articles of export from the dominions of his Highness, the growth, produce or manufacture thereof.

Article seventh concedes to ships of war of the United States the privilege of entering the ports, rivers and creeks, situate within the dominions of his Highness, and allows such ships to provide themselves, at fair and moderate prices, with such supplies, stores and provisions, as they may from time to time require.

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Article eighth engages, that if any vessel under the American flag should be wrecked on the coast of his dominions, to give all the assistance in his power to recover for, and to deliver over to the owners thereof, all the property saved from such vessels; and he further engages to extend to the officers and crews, and to all other persons on board of such vessels, full protection as to their persons and their property.

Article ninth agrees that in all cases where a citizen of the United States shall be accused of a crime, the person so accused shall be exclusively tried and adjudged by the American consul, or other officer duly appointed for that purpose; and in all cases where disputes and difficulties may arise between American citizens and his Highness, or between American citizens and subjects of any other foreign power in the Sultan's dominions, the American consul, or other duly appointed officer, shall have power to hear and decide the same, without any interference, molestation or hindrance on the part of any authority in Borneo, during and after the litigation.

This treaty to be ratified, and the ratifications thereof exchanged at Bruni, within two years after date.

Done at the city of Bruni on the 23d day of June, A.D. 1850, and on the 13th day of the month of Saaban, of the year of the Hegira 1266.

A further statement of the preliminaries leading up to the negotiations is in despatch No. 15 from Balestier, dated on the U.S. flagship *Plymouth*, at anchor off Labuan, June 17, 1850 (published correspondence, 81–83), from which the following is extracted:

Early on the morning of the 11th inst., accompanied by a Malay writer, whom I hired at Labuan, I left the Plymouth in one of her boats, and after a hard pull of ten hours up the river, I came to Bruni at dusk, twenty-five miles from the ship. State barges and officers of the Sultan's court met us at several places on the river, and escorted us to a residence. On the following morning I was received by the Sultan, amidst a large assembly of princes and nobles, who, with the Sultan himself, manifested unbounded joy at the distinguished honor done to his Highness the Sultan. On presenting the President's letter, it received a salute of twenty-one guns. On my proposing to enter at once on business, the prime minister replied that the Sultan's heart was too full that day to think of business; but that on the day ensuing, he, the prime minister, would call and confer on business with me.

He came next day, bringing with him the draught of a treaty, in the form of a letter, from the Sultan, admitting us to trade on the same terms as the English do, by treaty. I objected to this form, and told him that a regularly drawn up treaty would be more agreeable; and after some other conferences, it was agreed that we would both come here—Labuan—to complete a convention of friendship and trade, precisely like the one they have with the Queen of England, which I sincerely hope will prove acceptable.

Leaving Bruni on the 15th, we reached the ship in five hours; and as the minister has come down, I shall do my utmost to bring matters to a close in the shortest possible time.

The "convention . . . with the Queen of England", from which the articles of this treaty were taken, is the Treaty of Friendship and Commerce and for the Suppression of the Slave Trade of May 27, 1847 (British and Foreign State Papers, XXXV, 14–17).

Labuan, the cession of which to Great Britain in 1845 is mentioned in the treaty cited and is there confirmed, is an island of about thirty square miles in area a few miles off the coast of Borneo, opposite the northern end of Brunei Bay.

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The Exchange of Ratifications

In submitting the treaty to the Senate with the message of June 11, 1852, which follows, President Fillmore called attention to the fact that the time limited for the exchange of ratifications, two years from the date of signature, would expire on the following June 23 (Executive Journal, VIII, 400):

I transmit to the Senate, for its consideration with a view to ratification, a convention between the United States and the Sultan of Borneo, signed at Bruni on the 23d of June, 1850. A copy of two dispatches to this Department from Mr. Balestier, who concluded the convention on the part of this Government, one dated the 22d of April and the other the 24th June, 1851, is also transmitted for the information of the Senate. As the period limited for the exchange of the ratifications, which is to be effected at Bruni, will expire on the 23d instant, I recommend that if the Senate should approve the convention, authority may be given to perform that ceremony within a year from that date. The instrument would have been submitted to the Senate in season for the ratification to be exchanged within the stipulated time, had not Mr. Balestier's arrival with it in the United States been unavoidably delayed.

Accordingly, the Senate resolution of advice and consent of June 23, 1852, which is in the following form, included provision for the exchange at any time prior to July 4, 1854 (*ibid.*, 403–4; collated here with the attested resolution in the treaty file):

Resolved, (two-thirds of the Senators present concurring) That the Senate advise and consent to the ratification of the Convention of peace, friendship and good understanding between the United States of America and His Highness the Sultan of Borneo, concluded at the city of Bruni, on the 23d day of June, Anno Domini, eighteen hundred and fifty.

And whereas the time limited by the said Convention for the exchange of ratifications of the same, will have expired before such exchange of ratifications can be effected, be it further

Resolved, (two-thirds of the Senators present concurring) That the Senate advise and consent to the exchange of ratifications of the said Convention at any time prior to the fourth day of July in the year, eighteen hundred and fifty four; whenever the same can be effected between the authorities of the United States and the duly constituted authority of His Highness the Sultan of Borneo, and the said ratifications shall be deemed and taken to have been regularly exchanged, the limitations contained in said Convention to the contrary notwithstanding.

The duplicate United States instrument of ratification, which is in the treaty file, indicates, by its form, acceptance of the erroneous idea that the Senate resolution of advice and consent, in providing for the extension of the time for exchange of ratifications, was intended as a textual amendment of the treaty; it reads as follows:

Millard Fillmore, President of the United States of America,

To all and singular who shall see these presents; Greeting:—

Whereas a Convention of Peace, Friendship, and good Understanding, between the United States of America, and His Highness, the Sultan of Borneo, was concluded and signed by their respective Plenipotentiaries, at the City of Bruni on the 23d. day of June, in the year of our Lord one thousand eight hundred and fifty, the original of which Convention, with an English translation, are hereunto annexed.

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And, whereas, the Senate of the United States by their Resolution of the 23d. June 1852 (two thirds of the Senators then present concurring) did advise and consent to the ratification of the said Convention, with the following provision, namely; that "Whereas the time limited by the said Convention for the Exchange of ratifications of the same, will have expired before such exchange of ratifications can be effected, be it further—

"Resolved, (two thirds of the Senators present consenting) That the Senate advise and consent to the Exchange of the ratifications of the said Convention at any time prior to the 4th. day of July in the year 1854; whenever the same can be effected between the authorities of the United States and the duly constituted authority of His Highness, the Sultan of Borneo, and the said ratifications shall be deemed and taken to have been regularly exchanged, the limitations contained in said Convention to the contrary notwithstanding."

Now, therefore, I, Millard Fillmore, President of the United States of America, having seen and considered the said Convention, do, in pursuance of the aforesaid advice and consent of the Senate, by these Presents, accept, ratify and confirm the said Convention, with the provision for extending the period for the exchange of the ratifications adopted by the Senate of the United States;— and every clause and article thereof.

In faith whereof I have caused the seal of the United States of America to be hereunto affixed.

[Seal] Given under my hand, at the City of Washington, this thirty first day of January, in the year of Our Lord, one thousand eight hundred and fifty-three, and of the Independence of the United States of America, the seventy-seventh.

MILLARD FILLMORE

By the President:
EDWARD EVERETT
Secretary of State.

The duty of effecting the exchange of ratifications of the treaty was entrusted to Captain William J. McCluney, U.S.N., to whom, on February 1, 1853, were given the necessary instructions and full power (D.S., 3 Special Missions, 15–18); the two reports of his mission, which follow, were received, respectively, on October 17, 1853, and July 11, 1854 (D.S., 19 Special Agents):

U.S. STEAM FRIGATE "POWHATAN"
Off the mouth of Bruni River Island of Borneo July 12th 1853

SIR, I have the honor to inform you that I arrived off this place on the 9th July in the Steamer "Powhatan", under my Command for the purpose of ratifying a Treaty made by Mr Balestier on the 23rd June 1850, with the Sultan of Borneo, having procured the day previous from the English Island of Labuan, an Interpreter and Malay writer. I started on the 10th inst with a divission of boats from the ship, for the City of Bruni, distant about fifteen miles from its mouth. On arriving there I found that Omar Ali Saiffeden, the Sultan who made the Treaty with Mr Balestier had died some time since; the present Sultan however was perfectly willing to ratify it immediately and appointed Pangeran Macota, his Prime Minister to Sign the Certificates of Ratification for the Government of Borneo; accordingly at 12 o'clock of the 11th of July the Certificates of Ratification were signed by Pangeran Macota and myself in presence of the Sultan and his Court, one Copy of which was left with the Sultan of Borneo, the other I have with the Sultan's Ratification to be sent to the United States in the first public vessel bound home.

I have the honor to be
Very Respectfully Your obt. St.

Wm J MCCLUNEY *Captain*

Hon: Wm L. MARCY *Secretary of State.*
Washington D.C.

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U.S. STEAM FRIGATE "POWHATAN"
Yoko-hama, Yedo Bay, April 5th 1854

SIR, I have the honor to forward to the State Department, by Commander Henry A. Adams, who returns to the United States in the Sloop of War Saratoga, as bearer of despatches from Commodore Perry, the Sultan of Borneo's Ratification of the Treaty made with Mr Balestier on the 23rd June 1850; also the Certificate of Ratification Signed by Pangeran Macotah, Prime Minister, on the part of the Sultan of Borneo, and myself on the part of the United States. Duplicate Certificates were signed in the presence of the Sultan of Borneo and his Court on the 11th day of July 1853, in the City of Bruni; one of the Certificates was deposited with the Sultan, in obedience to orders from the State Department. Enclosed is a translation of the Sultan's Ratification

I have the honor to be
Very Respectfully Your Obt. Serv't
Wm J McCLUNEY, *Captain U.S. Navy*

Hon: Wm L. MARCY *Secretary of State*
Washington D.C.

The ratification of the treaty by the Sultan of Brunei is written in Malay on a single sheet of paper, with the seal of the Sultan in the upper right-hand corner. It does not include the text of the treaty. At the foot of the instrument is the signature of William J. McCluney as Captain, United States Navy; above this signature is a cross, and over the cross a superscription in Malay. The contemporaneous translation of the ratification follows:

This letter comes from us, Sultan Abdul Momein Ebnoo Morhum Inoulana Abdul Wahab, who now holds the Government of the Country of Bruri and its dependencies.

Regarding the Treaty with our friend the President which Mr Balestier made with the late Sultan on the 23rd June 1850, we have now received from W. J. McCluney, Captain of a United States Man of War who is the Agent from our friend the President.

We now ratify that Treaty and our Pangeran Macota is our witness and both have put their signatures to this.

This ratification is made the 4th day of Sawl Monday 1269 (11th day of July 1853)

Signature of PANGERAN MACOTA.

Regarding the ratification of the Sultan of Brunei, Professor Snouck Hurgronje wrote these comments:

The ratification of the Sultan of Brunei is written in a very much better handwriting than that of the treaty. At the top are the Arabic words meaning "and the Sun and the Moon". This superscription, found also at the top of other royal documents of the Malays, seems to allude to some verses of the Qoran, where it is said that the Sun and the Moon and the Stars and all other creatures prostrate themselves in adoration of Allah. The text of the ratification runs as follows:

> This is a letter of sincerity (this letter is straightforward) and a gift of various things (term used in Malay letter-writing to describe the gifts that in former times accompanied every letter, and used even when no gifts are sent) from Us, Sultan Abdulmu'min, son of al-Marhum (which means: the late) Our Lord Abdulwahhab, to whom belongs at this moment the government of the country of Brunei with all its dependencies: We herewith declare to Our friend Teela (Taylor?) the President that We have received the treaty of Mr. Joseph Balestier with the former Sultan, written on the twenty-third day of June of the year one thousand eight hundred and fifty, from Mr. Micklunee, warman-captain of the United States, Plenipotentiary

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of Our friend Teela the President. We have ratified (literally: achieved) that treaty with its witness Pangeran Endar Makota and both have put their signatures. Written on the fourth day of the month Shawwal on Monday in the year 1269.

The cross above the signature of McCluney seems to represent the signature of the Pangeran, who was evidently unable to write; it bears the superscription: "Signature of Pangeran Endar Makota".

The separate seal has in its first four lines: "The putting his trust in Allah. This is the Sultan Abdulmu'min, son of the late Abdulwahhab"; the rest of the fourth and the fifth line have eleven unconnected Arabic letters, the addition of which may have had some magical purpose. The sixth line of the seal bears the year 1269.

The certificate of the exchange of ratifications, written in English, is in this form:

We, *William J. McCluney and Pangeran Endar Macotah*, having this day met for the purpose of exchanging the ratifications of the Treaty between the United States of America and His Highness, the Sultan of Borneo, signed in the City of Bruni on the twenty third day of June, in the year of our Lord, one thousand eight hundred and fifty:—

Certify that the exchange aforesaid was made by us.

In witness, whereof, we have hereunto set our hands and affixed our seals, in duplicate

Bruni, 11th July 1853.

Wm J McCluney *Capt* [Seal]
[Arabic letters] [Seal]

Witnesses present
H W. Parr
Chas D. Maxwell *US Navy*
R. B. Pegram *Lt.*

As to the Arabic letters which appear on the certificate of exchange under the signature of Captain McCluney, Professor Snouck Hurgronje wrote: "At the bottom of the English certificate of the exchange of ratifications the Pangeran seems to have replaced his cross (on the ratification) by an attempt to draw four Arabic letters, which have, however, no connection with his name; they might be read 'Tuku' or otherwise."

The "actually necessary expenses attendant upon the ratification of the Treaty with Borneo, such as gratuities to attendants of the Sultan, services of a Malay writer from Labuan &c.", were sixty dollars (Captain McCluney to the Secretary of State, July 12, 1853; D.S., Miscellaneous Letters re Accounts, January 3–December 31, 1853).

The Proclamation

The proclamation was issued the day after the receipt by the Department of State of the ratification of the Sultan of Brunei and the certificate of exchange; the original reads as follows:

By the President of the United States of America.

A Proclamation.

Whereas a Convention between the United States of America and His Highness the Sultan of Borneo, was concluded and signed by their respective Pleni-

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potentiaries at the City of Bruni, on the 23d day of June, one thousand eight hundred and fifty,—the original of which Convention is hereto annexed:

[Here follows the original treaty in Malay and English]

And whereas the said Convention has been duly ratified on both parts, and the respective ratifications of the same were exchanged, at the City of Bruni, on the 11th day of July, one thousand eight hundred and fifty three, by Captain William J. M°Cluney, of the United States' Navy, and Pangeran Endar Macotah, Prime Minister of His Highness the Sultan of Borneo, on the part of their respective Governments:

Now, therefore, be it known that I, Franklin Pierce, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this twelfth day of July, in the
[Seal] year of Our Lord one thousand eight hundred and fifty-four, and of the Independence of the United States the seventy-ninth.

FRANKLIN PIERCE

By the President:
W. L. MARCY.
Secretary of State.

BORNEO AND BRUNEI

Some explanation of the two words "Borneo" and "Brunei" is desirable. Both are European derivations from the same word in Malay, but they have very different significations.

Borneo is not a political term at all, but one of geography only, meaning the island of Borneo, which has an area estimated at about 290,000 square miles.

Brunei is a political rather than a geographic term. It is now a small state, with a capital of the same name, under the rule of a Sultan (under British protection). The Sultanate of Brunei, which has existed since the fifteenth century, never embraced more than a comparatively moderate portion of the island of Borneo.

At no time known to history has the island of Borneo ever been under one political rule. There has never been a Sultan of Borneo in the sense of a Sultan of Borneo ruling or claiming to rule over that island; and while both in this treaty and in that made by Great Britain with the same power on May 27, 1847 (British and Foreign State Papers, XXXV, 14–17), the ruler of Brunei is styled "the Sultan of Borneo", the expression is misleading. That ruler was the Sultan of Brunei.

The Sultanate of Brunei formerly comprised much of northern Borneo and reached to Sambas (now in Netherlands Borneo) on the west coast; the present Sarawak was thus within the Sultanate; it even included, it seems, the southern portion of Palawan (Philippine Islands). It is to the wealth and importance of the Sultanate in the early sixteenth century that the extension of the name to the whole island, by European navigators, is due. The Sultanate, however, had greatly declined by the early nineteenth century. The grant of

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Sarawak (far less extensive than the present Sarawak) to Sir James Brooke, as Rajah, was made in 1841; and successive cessions made from time to time since, have reduced the Sultanate of Brunei to some 2,500 square miles with a coastline of 80 miles and a population of about 30,000; the Sultanate came under British protection in 1888 and since 1906 has been administered by a British Resident.

The island of Borneo is now divided politically into three parts, aside from the Sultanate of Brunei: British North Borneo, a British protectorate, administered by the British North Borneo Company (31,000 square miles); Sarawak, under British protection (50,000 square miles); and Netherlands Borneo, the remainder of the island, with more than two thirds of its total area.

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Treaty Series No. 353
11 Statutes at Large, 587–95
18 *ibid.*, pt. 2, Public Treaties, 748–52

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SWITZERLAND : NOVEMBER 25, 1850

Convention of Friendship, Reciprocal Establishments, Commerce, and for the Surrender of Fugitive Criminals, signed at Bern November 25, 1850. Original in English and French.
Submitted to the Senate February 14, 1851. (Message of February 13, 1851.) Resolution of advice and consent, with amendments, March 7, 1851. Ratified by the United States March 12, 1851. Modifications proposed by the Government of Switzerland July 5, 1852. "New Draft", embodying said modifications, with certain alterations therein made by the President of the United States, submitted to the Senate February 7, 1853. (Message of February 3, 1853.) Resolution of advice and consent, with amendment, May 29, 1854. Ratified by the United States November 6, 1855. Ratified by Switzerland July 30, 1855. Ratifications exchanged at Washington November 8, 1855. Proclaimed November 9, 1855.
The source texts of the convention are discussed in the editorial notes, wherein appears the text of Articles 1, 5, 6, and 19 as signed on November 25, 1850.

The United States of America and the Swiss Confederation, equally animated by the desire to preserve and to draw more closely[1] the bonds of friendship which so happily exist between the two Republics, as well as to augment, by all the means at their disposal, the commercial intercourse of their respective citizens, have mutually resolved to conclude a General Convention of Friendship, Reciprocal Establishments, Commerce, and for the Surrender of Fugitive Criminals.

Les Etats-Unis d'Amérique et la Confédération Suisse, également animés du désir de maintenir et de resserrer de plus en plus les liens d'amitié qui existent si heureusement entre les deux Républiques, ainsi que d'accroître, par tous les moyens à leur disposition, les relations commerciales de leurs citoyens respectifs, ont de part et d'autre résolu de conclure un Traité général d'Amitié, d'Etablissemens réciproques, de Commerce et d'Extradition des criminels.

[1] In the convention as signed the phrase reads, "to tighten, more and more, the bonds".

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For this purpose, they have appointed as their Plenipotentiaries, to wit:

The President of the United States, A. Dudley Mann, Special Agent of the United States on a mission to the Swiss Confederation, and

The Swiss Federal Council, Henry Druey, President of the Swiss Confederation, Director of the Political Department, and Frederick Frey-Herosée, Member of the Federal Council, Director of the Department of Commerce and of Tolls, who, after a communication of their respective full powers, have agreed to the following articles:—

ARTICLE I.

The citizens of the United States of America and the citizens of Switzerland shall be admitted and treated upon a footing of reciprocal equality in the two countries, where such admission and treatment shall not conflict with the Constitutional or legal provisions as well Federal as State and Cantonal of the contracting parties. The citizens of the United States and the citizens of Switzerland, as well as the members of their families, subject to the Constitutional and legal provisions aforesaid, and yielding obedience to the laws, regulations and usages of the country wherein they reside, shall be at liberty to come, go, sojourn temporarily, domiciliate or establish themselves permanently, the former in

A cet effet, ils ont nommé pour leurs Plénipotentiaires, savoir:

Le Président des Etats-Unis, A. Dudley Mann, Agent Spécial des Etats-Unis en mission auprès de la Confédération Suisse, et

Le Conseil Fédéral Suisse, Henri Druey, Président de la Confédération Suisse, Directeur du Département Politique, et Frédéric Frey-Herosée, Membre du Conseil Fédéral, Directeur du Département du Commerce et des Péages, lesquels, après s'être communiqué leurs pleins pouvoirs respectifs, sont convenus des articles suivans:—

ARTICLE I

Les citoyens des Etats-Unis d'Amérique et les citoyens de la Suisse seront admis et traités sur un pied d'égalité réciproque dans les deux pays, lorsque cette admission et ce traitement n'auront rien de contraire aux dispositions constitutionnelles ou légales, tant Fédérales que des Etats et des Cantons des parties contractantes. Les citoyens des Etats-Unis et les citoyens de la Suisse, ainsi que les membres de leurs familles, pourvu qu'ils se conforment aux dispositions constitutionnelles et légales ci-dessus mentionnées et qu'ils obéissent aux lois, règlemens et usages du pays où ils résideront, pourront aller, venir, séjourner temporairement, prendre un domicile fixe ou s'établir d'une manière permanente, les premiers

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the Cantons of the Swiss Confederation, the Swiss in the States of the American Union, to acquire, possess and alienate therein property (as is explained in Article V); to manage their affairs, to exercise their profession, their industry and their commerce, to have establishments, to possess warehouses, to consign their products and their merchandise, and to sell them by wholesale or retail, either by themselves, or by such brokers or other agents as they may think proper; they shall have free access to the Tribunals and shall be at liberty to prosecute and defend their rights before courts of Justice, in the same manner as native citizens, either by themselves, or by such advocates, attorneys or other agents as they may think proper to select. No pecuniary or other more burdensome condition shall be imposed upon their residence or establishment, or upon the enjoyment of the abovementioned rights than shall be imposed upon citizens of the country where they reside, nor any condition whatever, to which the latter shall not be subject.

The foregoing privileges however shall not extend to the exercise of political rights nor to a participation in the property of communities, corporations or institutions of which the citizens of one party, established in the other, shall not have become members or co-proprietors.

dans les Cantons de la Confédération Suisse, les Suisses dans les Etats de l'Union américaine; y acquérir, posséder et aliéner des propriétés (ainsi qu'il est expliqué à l'art V); y gérer leurs affaires, y exercer leur profession, leur industrie et leur commerce, y avoir des établissemens, y tenir des magasins, y consigner leurs produits et leurs marchandises, les vendre en gros ou en détail, tant par eux-mêmes que par tels courtiers ou autres agents qu'ils jugeront convenable; ils auront libre accès devant les Tribunaux et pourront faire valoir leurs droits en Justice, à l'instar des nationaux, soit par eux-mêmes, soit par tels avocats, avoués ou autres agents qu'ils jugeront convenable de choisir. On ne pourra leur imposer pour la résidence ou l'établissement ou pour l'exercice des droits mentionnés plus haut, aucune condition pécuniaire ou autre, plus onéreuse qu'aux citoyens du pays dans lequel ils résident, ni aucune condition à laquelle ceux-ci ne seraient pas tenus.

Ne sont cependant pas compris dans les avantages mentionnés ci-dessus, l'exercice des droits politiques et la participation aux biens des communes, des corporations ou des fondations dans lesquelles les citoyens de l'un des pays établis dans l'autre, n'auraient pas été reçus membres ou à titre de co-propriétaires.

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ARTICLE II.

The citizens of one of the two countries, residing or established in the other, shall be free from personal military service, but they shall be liable to the pecuniary or material contributions, which may be required, by way of compensation, from citizens of the country where they reside, who are exempt from the said service.

No higher impost, under whatever name, shall be exacted from the citizens of one of the two countries, residing or established in the other, than shall be levied upon citizens of the country in which they reside, nor any contribution whatsoever to which the latter shall not be liable.

In case of war or of expropriation for purposes of public utility, the citizens of one of the two countries residing or established in the other shall be placed upon an equal footing with the citizens of the country in which they reside, with respect to indemnities for damages they may have sustained.

ARTICLE III.

The citizens of one of the two Republics, residing or established in the other, who shall desire to return to their country, or who shall be sent thither by a judicial decision, by an act of police, or in conformity with the laws and

ARTICLE II.

Les citoyens de l'un des deux pays résidant ou établis dans l'autre, seront affranchis du service militaire personnel, mais ils seront tenus aux prestations pécuniaires ou matérielles, imposées, par compensation, aux citoyens du pays où ils résident, libérés de ce service.

On ne pourra exiger des citoyens de l'un des deux pays résidant ou établis dans l'autre, aucun impôt, à quelque titre que ce soit, plus élevé que ceux auxquels sont soumis les citoyens du pays dans lequel ils résident, non plus qu'aucune contribution quelconque qui ne serait pas exigée de ces derniers.

En cas de guerre ou d'expropriation pour cause d'utilité publique, les citoyens de l'un des deux pays résidant ou établis dans l'autre seront assimilés aux citoyens du pays où ils résident, en ce qui concerne les indemnités pour les dommages qu'ils auront éprouvés.

ARTICLE III.

Les citoyens de l'une des deux Républiques, résidant ou établis dans l'autre, qui voudront retourner dans leur pays, ou qui y seront renvoyés par sentence du juge, par mesure de police, ou d'après les lois et règlemens sur

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regulations on morals and mendicity, shall be received at all times and under all circumstances, they, their wives and their legitimate issue, in the country to which they belong, and in which they shall have preserved their rights, in conformity with the laws thereof.

ARTICLE IV.

In order to establish their character as citizens of the United States of America or as citizens of Switzerland, persons belonging to the two contracting countries shall be bearers of pass-ports, or of other papers in due form, certifying their nationality as well as that of the members of their family, furnished or authenticated by a diplomatic or consular Agent of their nation, residing in the one of the two countries which they wish to inhabit.

ARTICLE V

The citizens of each one of the contracting parties shall have power to dispose of their personal property, within the jurisdiction of the other, by sale, testament, donation or in any other manner, and their heirs, whether by testament or *ab intestato*, or their successors, being citizens of the other party, shall succeed to the said property or inherit it, and they may take possession thereof, either by themselves or by others acting for them; they may dispose of the same as they may

les moeurs et la mendicité, seront reçus en tout temps et en toute circonstance, eux, leurs femmes et leurs descendans legitimes, dans le pays dont ils sont originaires et où ils auront conservé leurs droits conformément aux lois.

ARTICLE IV.

Afin de constater leur qualité de citoyens des Etats-Unis d'Amérique ou de citoyens Suisses, les ressortissants des deux pays contractans devront être porteurs de passe-ports, ou d'autres papiers en due forme, attestant leur nationalité, ainsi que celle des membres de leur famille, et délivrés ou visés par un Agent diplomatique ou consulaire de leur nation, résidant dans celui des deux pays où ils veulent habiter.

ARTICLE V.

Les citoyens de chacune des parties contractantes pourront librement disposer de leurs biens personnels, sis dans la juridiction de l'autre, soit par vente, testament, donation, ou de toute autre manière, et leurs héritiers testamentaires ou *ab intestato*, ou leurs successeurs quelconques, citoyens de l'autre partie, acquerront ces dits biens ou en hériteront, et ils pourront en prendre possession, eux-mêmes ou par fondés de pouvoirs; ils pourront en disposer comme ils l'entendront, n'ayant

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think proper, paying no other charges than those to which the inhabitants of the country wherein the said property is situated shall be liable to pay in a similar case. In the absence of such heir, heirs, or other successors, the same care shall be taken by the authorities, for the preservation of the property, that would be taken for the preservation of the property of a native of the same country, until the lawful proprietor shall have had time to take measures for possessing himself of the same.

The foregoing provisions shall be applicable to real estate, situated within the States of the American Union or within the Cantons of the Swiss Confederation in which foreigners shall be entitled to hold or inherit real estate.

But in case real estate, situated within the territories of one of the contracting parties, should fall to a citizen of the other party, who, on account of his being an alien, could not be permitted to hold such property, in the State or in the Canton in which it may be situated, there shall be accorded to the said heir or other successor such term as the laws of the State or Canton will permit to sell such property; he shall be at liberty at all times to withdraw and export the proceeds thereof without difficulty and without paying to the Govern-

à payer d'autres droits que ceux auxquels sont soumis en pareil cas les habitants mêmes du pays dans lequel ces biens sont situés. En l'absence de l'héritier, ou des héritiers ou des autres successeurs, l'autorité prendra, pour la conservation des dits biens, les mêmes soins que s'il s'agissait de la conservation des biens d'un natif du même pays, et cela jusqu'à ce que le propriétaire légal des biens ait pu prendre les mesures convenables pour les recueillir.

Les dispositions ci-dessus s'appliqueront en plein aux propriétés immobilières sises dans les Etats de l'Union américaine ou dans les Cantons de la Confédération Suisse dans lesquels les étrangers sont admis à la possession en nature ou à l'héritage de propriétés foncières.

Mais si des propriétés immobilières sises sur le territoire de l'une des parties contractantes, venaient à échoir à un citoyen de l'autre partie, qui, à cause de sa qualité d'étranger, ne serait pas admis à la possession en nature de ces propriétés, dans l'Etat ou dans le Canton dans lequel elles sont situées, il serait accordé à cet héritier ou successeur quelconque tel terme que les lois de l'Etat ou du Canton le permettent pour vendre ces propriétés; il pourra toujours en retirer et exporter le produit sans difficulté et sans payer au Gouvernement aucun

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ment any other charges than those which, in a similar case would be paid by an inhabitant of the country in which the real estate may be situated.

ARTICLE VI.

Any controversy that may arise among the claimants to the same succession, as to whom the property shall belong, shall be decided according to the laws and by the Judges of the country, in which the property is situated.

ARTICLE VII.

The contracting parties give to each other the privilege of having, each, in the large cities and important commercial places of their respective States, Consuls and Vice-Consuls of their own appointment, who shall enjoy the same privileges and powers, in the discharge of their duties, as those of the most favored nations. But before any Consul or Vice-Consul shall act as such, he shall, in the ordinary form, be approved of by the Government to which he is commissioned.

In their private and business transactions, Consuls and Vice-Consuls shall be submitted to the same laws and usages as private individuals, citizens of the place in which they reside.

It is hereby understood that in case of offence against the laws,

autre droit que celui qui, dans un cas analogue, serait dû par un habitant du pays dans lequel les propriétés foncières sont situées.

ARTICLE VI.

Les contestations qui pourraient s'élever entre les prétendans à une succession, sur la question de savoir à qui les biens doivent appartenir, seront portées devant les tribunaux et jugées d'après les lois du pays dans lequel la propriété est située.

ARTICLE VII.

Les parties contractantes s'accordent mutuellement le droit d'avoir, dans les grandes villes et les places de commerce importantes de leurs Etats respectifs, des Consuls et des Vice-Consuls, nommés par elles, qui jouiront, dans l'exercice de leurs fonctions, des mêmes privilèges et des mêmes pouvoirs, que ceux des Nations les plus favorisées. Mais avant qu'un Consul ou un Vice-Consul puisse agir en cette qualité, il devra avoir été reconnu, dans la forme ordinaire, par le Gouvernement auprès duquel il est accrédité.

Pour leurs affaires privées et commerciales, les Consuls et Vice-Consuls seront soumis aux mêmes lois et aux mêmes usages que les particuliers, citoyens de l'endroit où ils résident.

Il est entendu qu'en cas d'infraction aux lois, par un Consul

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by a Consul or a Vice-Consul, the government to which he is commissioned, may, according to circumstances, withdraw his exequatur, send him away from the country, or have him punished in conformity with the laws, assigning to the other government its reasons for so doing.

The archives and papers belonging to the Consulates shall be respected inviolably, and under no pretext whatever shall any magistrate, or other functionary, visit, seize, or in any way interfere with them.

ARTICLE VIII.

In all that relates to the importation, exportation and transit of their respective products, the United States of America and the Swiss Confederation shall treat each other, reciprocally, as the most favored Nation, Union of Nations, State or Society, as is explained in the following articles.

ARTICLE IX.

Neither of the contracting parties shall impose any higher or other duties upon the importation, exportation or transit of the natural or industrial products of the other, than are or shall be payable upon the like articles, being the produce of any other country, not embraced within its present limits.

ou un Vice-Consul, le Gouvernement auprès duquel il est accrédité, pourra, suivant les circonstances, lui retirer l'exéquatur, le renvoyer du pays ou le faire punir conformément aux lois, en faisant savoir à l'autre Gouvernement les raisons qui l'ont déterminé.

Les archives et les papiers appartenant aux Consulats seront inviolablement respectés, et aucun magistrat, ni aucun autre fonctionnaire ne pourra, sous quelque prétexte que ce soit, les visiter, les saisir, ou s'y immiscer d'une manière quelconque.

ARTICLE VIII.

Pour tout ce qui concerne l'importation, l'exportation et le transit de leurs produits respectifs, les Etats-Unis d'Amérique et la Confédération Suisse se traiteront réciproquement comme la Nation, l'Union de Nations, l'Etat ou la Société la plus favorisée, ainsi qu'il est expliqué aux articles ci-après.

ARTICLE IX.

Aucune des parties contractantes ne pourra exiger, pour l'importation, l'exportation ou le transit des produits naturels ou industriels de l'autre, des droits plus élevés ni d'autres droits, que ceux qui sont ou seront imposés sur les mêmes articles, provenant de tout autre pays en dehors de ses limites actuelles.

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ARTICLE X.

In order the more effectually to attain the object contemplated in article VIII, each of the contracting parties hereby engages not to grant any favor in commerce to any Nation, Union of Nations, State, or Society, which shall not immediately be enjoyed by the other party.

ARTICLE X.

Afin d'atteindre d'autant mieux le but qu'elles se proposent à l'article VIII, chacune des parties contractantes s'engage à n'accorder à aucune Nation, Union de Nations, Etat ou Société que ce soit, de faveur en fait de commerce, sans en faire aussitôt jouir l'autre partie.

ARTICLE XI.

Should one of the contracting parties impose differential duties upon the products of any nation, the other party shall be at liberty to determine the manner of establishing the origin of its own products, destined to enter the country by which the differential duties are imposed.

ARTICLE XI.

Si l'une des parties contractantes imposait des droits différentiels sur les produits de quelque nation, l'autre partie pourra déterminer comme elle l'entendra, la manière de constater l'origine de ses propres produits, destinés à être importés dans le pays où se perçoivent les droits différentiels.

ARTICLE XII.

The Swiss territory shall remain open to the admission of articles arriving from the United States of America; in like manner, no port of the said States shall be closed to articles arriving from Switzerland, provided they are conveyed in vessels of the United States or in vessels of any country having free access to the ports of said States. Swiss merchandise arriving under the flag of the United States or under that of one of the nations most favored by them, shall pay the same duties as the merchandise of such nation; under any other flag, it shall

ARTICLE XII.

Le territoire Suisse demeurera ouvert à l'entrée des objets venant des Etats-Unis d'Amérique; de même, aucun port de ces Etats ne sera fermé aux objets venant de la Suisse, pourvu que ceux-ci arrivent sur des navires des Etats-Unis ou sur tout autre navire ayant libre accès dans les ports de l'Union. Arrivant sous pavillon des Etats-Unis, ou sous celui d'une des nations les plus favorisées, les marchandises Suisses paieront les mêmes droits, que celles de cette dernière nation; sous un autre pavillon, elles seront traitées comme les mar-

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be treated as the merchandise of the country to which the vessel belongs.

In case of ship-wreck and of salvage on the coasts of the United States, Swiss merchandise shall be respected and treated as that belonging to citizens of the said States.

The United States consent to extend to Swiss products, arriving or shipped under their flag, the advantages which are or shall be enjoyed by the products of the most favored nation, arriving or shipped under the same flag.

It is hereby understood that no stipulation of the present article shall in any manner interfere with those of the four aforegoing articles, nor with the measures which have been or shall be adopted by either of the contracting countries in the interest of public morality, security or order.

ARTICLE XIII.

The United States of America and the Swiss Confederation, on requisitions made in their name through the medium of their respective diplomatic or consular Agents, shall deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek asylum or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime

chandises du pays auquel appartient le navire.

En cas de naufrage et de sauvetage sur les Côtes des Etats-Unis, les marchandises Suisses seront considérées et traitées comme celles appartenant à des citoyens des Etats-Unis.

Les Etats-Unis consentent à étendre aux produits Suisses, arrivant ou expédiés sous Leur pavillon, les avantages dont jouissent ou jouiront les produits de la Nation la plus favorisée, arrivant ou expédiés sous le même pavillon.

Il est entendu que les dispositions du présent article ne dérogent en rien à celles des quatre articles ci-dessus, non plus qu'aux mesures dans l'intérêt de la moralité, de la sécurité ou de l'ordre publics, prises ou qui pourront être ordonnées dans l'un ou dans l'autre des pays contractans.

ARTICLE XIII.

Les Etats-Unis d'Amérique et la Confédération Suisse seront tenus, sur les réquisitions faites en leur nom par l'intermédiaire de leurs Agens diplomatiques ou consulaires respectifs, de se livrer réciproquement, pour être traduits en justice, les individus qui, prévenus des crimes énumérés à l'article suivant, commis dans la juridiction de la partie requérante, chercheront un asile ou seront trouvés sur les territoires de l'autre partie:—*Toutefois* l'extradition ne sera obligatoire que

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shall be so established as to justify their apprehension and commitment for trial, if the crime had been committed in the country where the persons, so accused, shall be found.

ARTICLE XIV.

Persons shall be delivered up, according to the provisions of this Convention, who shall be charged with any of the following crimes, to wit;

Murder, (including assassination, parricide, infanticide and poisoning;)

Attempt to commit murder;

Rape;

Forgery, or the emission of forged papers;

Arson;

Robbery with violence, intimidation, or forcible entry of an inhabited house;

Piracy;

Embezzlement by public officers, or by persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE XV.

On the part of the United States the surrender shall be made only by the authority of the Executive thereof, and on the part of the Swiss Confederation, by that of the Federal Council.

dans le cas où les faits à la charge du prévenu seront constatés de manière à justifier son arrestation et sa mise en jugement, si le crime eût été commis dans le pays où le dit individu a été trouvé.

ARTICLE XIV.

Seront livrés, en vertu des dispositions de cette Convention, les individus prévenus de l'un des crimes suivans, savoir;

Le Meurtre, (y compris les crimes qualifiés d'assassinat, de parricide, d'infanticide et d'empoisonnement);

La tentative de meurtre;

Le viol;

Le faux, y compris l'emission de faux papiers;

L'incendie;

Le vol commis avec violence, ou par intimidation, ou avec effraction, ou escalade, dans une maison habitée;

La piraterie;

La soustraction commise par des dépositaires publics, ou des personnes salariées, au détriment de ceux qui les emploient, mais dans le cas seulement ou ces crimes entraîneraient à des peines infamantes.

ARTICLE XV.

L'extradition ne sera effectuée de la part du Gouvernement des Etats-Unis, que sur l'ordre du Pouvoir Exécutif; et de la part de la Confédération, que sur l'ordre du Conseil Fédéral.

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ARTICLE XVI

The expenses of detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XVII

The provisions of the aforegoing articles, relating to the Surrender of Fugitive Criminals, shall not apply to offences committed before the date hereof, nor to those of a political character.

ARTICLE XVIII

The present Convention is concluded for the period of ten years, counting from the day of the exchange of the ratifications; and if one year before the expiration of that period, neither of the contracting parties shall have announced, by an official notification, its intention, to the other, to arrest the operations of said Convention, it shall continue binding for twelve months longer, and so on, from year to year, until the expiration of the twelve months which will follow a similar declaration, whatever the time at which it may take place.

ARTICLE XIX.

This Convention shall be submitted, on both sides, to the approval and ratification of the

ARTICLE XVI.

Les frais de détention et d'extradition, opérées en vertu des articles précédens, seront supportés par le Gouvernement au nom duquel la réquisition aura été faite.

ARTICLE XVII.

Les dispositions des articles ci-dessus, qui se rapportent à l'Extradition des criminels, ne seront point applicables aux crimes commis antérieurement à la dâte de la présente convention, ni aux crimes ou délits ayant un caractère politique.

ARTICLE XVIII.

La présente convention est conclue pour dix ans, à dâter du jour de l'échange des ratifications. Elle continuera d'être obligatoire pendant douze mois, si un [1] avant l'expiration du premier terme, aucune des parties contractantes n'a déclaré à l'autre, par une notification officielle, qu'elle renonce au traité, et ainsi de suite d'année en année, jusqu'à l'expiration des douze mois qui suivront une pareille déclaration de renonciation, quelque soit l'époque à laquelle elle aura été notifiée.

ARTICLE XIX.

Cette Convention sera soumise, de part et d'autre à l'approbation et à la ratification des

[1] The word *an* is here omitted—*un an avant.*

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respective competent authorities of each of the contracting parties, and the ratifications shall be exchanged at the City of Washington, as soon as circumstances shall admit.

In faith whereof the respective Plenipotentiaries have signed the above articles, under reserve of the abovementioned ratifications, both in the English and French languages, and they have thereunto affixed their seals.

Done, in quadruplicate, at the City of Berne, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty.

autorités compétentes respectives de chacune des parties contractantes; et les ratifications en seront échangées à Washington, aussitôt que les circonstances le permettront.

En foi de quoi les Plénipotentiaires respectifs ont, sous réserve des ratifications qui viennent d'être mentionnées, signé les articles ci-dessus, dans les langues anglaise et française, et y ont apposé leur sceau.

Ainsi fait, par quadruplicata, à Berne, ce vingt-cinq Novembre de l'an de Grâce mil huit cent cinquante.

[Seal] A. Dudley Mann.
[Seal] H. Druey.
[Seal] F Frey-Herosee

NOTES

This agreement, throughout the English version, is called a "General Convention" or simply a "Convention"; the French has "Traité général" in the preamble, but elsewhere "Convention" (see Articles 14, 18, and 19).

The File Papers

The final clause of this convention contains the statement that it was signed "in quadruplicate"; and it appears from the despatches of Ambrose Dudley Mann, Special Agent and Plenipotentiary of the United States, who signed the convention, that two originals were sent to Washington (D.S., 14 Special Agents, Nos. 6 and 7, November 25 and 30, 1850). Both of these originals are now in the treaty file; the one enclosed with the earlier of the two despatches cited is hereinafter generally referred to as the *first* original, and the other, marked in pencil as received with the later despatch, as *the* original or the *second* original; the text in each original is written in English and French, with the English version in the left columns.

The two originals were written by different scriveners; they are easily distinguishable by the fact that the first has the article numbers in arabic, and the second in roman; it is the second original which is here used as a source text, as explained hereinafter more in detail under the heading "The Source Texts"; the second original is the

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more carefully written of the two, in its spelling, for example; it is almost certain that it was the second original which was submitted to the Senate with the presidential message of February 13, 1851; and each of the two instruments of ratification is closer to the second original than to the first.

In minor respects the two originals are not identic. There are differences in spelling, accents, capitalization, and writing style, which are to be deemed quite immaterial. There are also differences of punctuation, about eighty in number; these are chiefly in the matter of commas; examination thereof leads to the conclusion that none of them is worthy of specific mention.[1] In wording, seven variances have been noticed; the first original omits "own" in Article 11, and has "at cost" instead of "at the cost" in Article 16; in the French version the first original has "leurs moeurs" for "les moeurs" in Article 3, "prises en" for "prises ou" in the final paragraph of Article 12, "le territoire" for "les territoires" in Article 13, "supportés et payés" for "supportés" in Article 16, and (correctly) "un an avant" for "un avant" in Article 18.

The text embodied in the Swiss instrument of ratification shows that the principle of the *alternat* was duly followed in the order of the two languages, in the preamble and in the testimonium clause, and for the signatures, but not generally throughout the wording.

The treaty file is complete. It includes, besides the two signed originals of the convention, the original and the duplicate original of the United States instrument of ratification of March 12, 1851; the two attested Senate resolutions of March 7, 1851, and May 29, 1854; the duplicate United States instrument of ratification of November 6, 1855; the Swiss instrument of ratification of July 30, 1855; the certificate of the exchange of ratifications at Washington on November 8, 1855; and the original proclamation of November 9, 1855. These papers are mentioned and described in the course of the subsequent discussion.

The Full Powers

According to the preamble of the convention, the full powers were communicated; but nothing further appears as to the full powers of the Swiss Plenipotentiaries; that given to Ambrose Dudley Mann, the Plenipotentiary of the United States, was in customary form, but very broad as to substance, covering "all matters and subjects interesting to both nations" and reading as follows (D.S., 3 Credences, 365):

Zachary Taylor, President of the United States of America.
To All, Whom These Presents Shall Concern,—Greeting:

Know ye, that for the purpose of establishing friendly relations between the United States and the Helvetic Confederation; and reposing special trust and

[1] Perhaps there is one exception. The antepenultimate clause in the French version of Article 14 is written in the second original, as it is printed following the headnote, with four commas; in the first original it has only one, after "*intimidation*"; in the Swiss instrument of ratification there are two, one after "*violence*" and the other after "*intimidation*"; the New Draft and the United States instrument of ratification follow the punctuation of the second original; but cf. the English version.

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confidence in the integrity, prudence and abilities of A. Dudley Mann, appointed Special Agent of the United States, to the Swiss Confederation, I have invested him with full and all manner of power and authority, for and in the name of the United States, to meet and confer with any person or persons, duly authorised by the Government of the Swiss Confederation, being furnished with like power and authority, and with him or them, to agree, treat, consult and negotiate of and concerning all matters and subjects interesting to both nations, and to conclude and sign a Treaty or Treaties, Convention or Conventions, touching the premises, transmitting the same to the President of the United States, for his final ratification, by and with the advice and consent of the Senate of the United States.

In Testimony whereof I have caused the seal of the United States to be hereunto affixed. Given under my hand, at the City of Washington,
(LS) this 15th day of June, A.D. 1850, and of the Independence of the United States of America the Seventy fourth.

By the President: Z. TAYLOR.
JOHN M. CLAYTON,
Secretary of State.

THE NEGOTIATIONS

The first diplomatic agent of the United States to be regularly accredited to the Government of Switzerland was Theodore S. Fay, who was commissioned Minister Resident on March 16, 1853 (first nominated as Chargé d'Affaires; see Executive Journal, IX, 27), and who presented his credentials on June 29, 1853. Fay had been Secretary of Legation at Berlin since 1837, and before that Secretary of Legation at London.

This convention was negotiated by Ambrose Dudley Mann on one of his various missions to Europe as Special Agent (see Wriston, Executive Agents in American Foreign Relations, 172, 346–51); his instructions from Secretary of State Clayton, under date of June 15, 1850, were these (D.S., 1 Special Missions, 310–13):

In closing my letter to you of the 1st of February last, I stated that the question of sending a special agent for commercial objects to Switzerland remained still under consideration. An unusual pressure of public business has hitherto delayed the decision of this question.

Since the date of our national existence we have hailed with pleasure all liberal demonstrations throughout the world and have been emulous to be the first to acknowledge new States claiming admission into the family of nations. But with the old Helvetic republic which has existed for centuries and which has ever been endeared to us by the liberality of its institutions and by the orderly deportment and character of its citizens, it may be thought that we have been too neglectful of diplomatic intercourse. At this period when the reactionary movement of continental Europe seems to threaten the obliteration of liberal political institutions we owe it to the character of our own free government, as well as to the commercial interests of our country to strengthen, by all the means at our disposal, the ties, which bind us to the Swiss confederation, which like our own happy land is the home of the free. We are aware that the total subversion of Swiss nationality has been threatened; and the sentiments of the American Government cannot be those of indifference to the fate of the Helvetic Republic. We do not propose to make any physical demonstration in its behalf, nor in behalf of the friends of national civil liberty in France, Germany and elsewhere. But it must not be imagined that we look upon their noble struggles to establish and maintain liberty upon a durable basis as unconcerned spectators. We regard as brothers and benefactors of the human family those enlightened and inflexible patriots in continental Europe, who have continued steadfast in their purpose to give to their countrymen such permanent institutions as Wash-

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ington and his contemporaries gave to America. That they may be eminently successful in the realization of their just aims, is assuredly the earnest prayer of our Government as it is that of the freemen who sustain it.

The importance of the preservation of the nationality of Switzerland to the United States in a commercial view cannot be mistaken. Our products enter the Cantons chiefly thro the ports of Havre and Antwerp; but Switzerland with a population of something less than two millions and a half, is reckoned to be the consumer of 150,000 bales of American cotton as well as much of our tobacco, rice and other products. The Swiss duties on tobacco are merely nominal, as they are upon the other products of the United States. Were the confederation even now to enter the Deutsche Zollverein, the heavy duties amounting to $3.35 pr cwt. on tobacco, now levied by that Union would add to the oppression of the *regié*, and enormous duties in other countries already so deeply affecting that American staple. Hitherto no considerations, whether of a political or commercial character seem to have impelled our Government so far as to enter into an ordinary treaty of amity and commerce with the Helvetic confederation, or to hold, with it, any diplomatic intercourse whatever. One effort was made to conclude a treaty with Switzerland which failed from a concurrence of fortuitous circumstances, and not from design. With the history of this proposition the Chief object of which was to unite with the assurances of amity usual in such instruments some important stipulations for the extradition of criminals you are well acquainted. You well remember that this treaty [extradition convention of September 15, 1846] fell to the ground because the period for the exchange of ratifications, which was only six months, expired before the Swiss confederation could be consulted as to an amendment proposed by the Senate of the United States, at the time of its confirmation by that Body. A copy of that treaty accompanies these instructions, and you will renew that proposition as it was approved by the Senate, combining with it such stipulations of a commercial character as may be deemed just and liberal, and best calculated to strengthen the bonds of friendship and alliance between the two sister Republics.

It is supposed that the objects of your mission can be easily accomplished in three months. But I do not propose to limit you to that precise period. In the meantime I shall expect full and frequent reports from you, as on former occasions when engaged in the public service.

You will herewith receive the following papers necessary in the execution of the duties hereby assigned to you by the President as Special Agent to the Swiss Confederation.

1, A full power.

2, Letter addressed to the Minister of foreign affairs of Switzerland and an office copy of the same.

3, A special passport.

4, A letter of credit on the Bankers of the United States in London, authorizing them to pay your drafts at the rate of $4,500 per annum beginning on the 15th instant; the date of these instructions. This allowance will supersede the trouble of keeping and rendering the usual detailed account of expenses. The sum of $200 is here advanced to you on account.

Mann received his instructions at Paris and presented his credentials at Bern on July 12, 1850; shortly thereafter he "transmitted to the Secretary of Foreign Affairs of the Swiss Confederacy an outline of the Convention" which he deemed himself authorized to sign (that outline is not now available); his first conference with the Swiss Plenipotentiaries was not had until September 26, owing to the illness of one of them; on November 25 the convention was signed and one original thereof was transmitted to Washington (D.S., 14 Special Agents, Nos. 2 to 6, inclusive, July 13 and 22, September 26, October 7, and November 25, 1850, *passim;* also No. 12, November 23, 1851); the report by Mann of the negotiations is in his despatch dated November 30, 1850, as follows (from Senate Confidential Document

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No. 1, 31st Congress, 2d session; the original despatch is not now available; the text thereof in D.S., 14 Special Agents, is a copy from the Senate print cited; see D.S., Miscellaneous Letters, February 1851, Millard Fillmore to Daniel Webster, February 13, 1851):

Trusting that my No. 6, with its accompaniment, arrived at its destination in due course, I have the honor to transmit to you herewith another copy [original] of the convention concluded here on the 25th instant.

By my instructions of June 15, I was required to negotiate with the government of the Swiss Confederation for the mutual surrender of fugitive criminals. A treaty for this purpose had been concluded at Paris on the 15th September, 1846, by our able minister near the Court of the Tuileries at that time [William Rufus King]. This treaty was ratified by the Senate of the United States, in executive session, March 3, 1847 [Executive Journal, VII, 237], with the exception of the following concluding words of the first article: "with the distinct understanding, however, that in no case shall the high contracting parties be required to deliver up their respective citizens."

Mr. King, as may be seen in his correspondence with the Swiss plenipotentiary, quite reluctantly assented to the stipulation objected to by the co-ordinate branch of the treaty-making power. In his note to that functionary, dated "Paris, September 11, 1846," after stating his reasons for desiring an unconditional surrender, he remarked: "Still, as this reservation is invariably made by Switzerland in its conventions for this object, and is, moreover, made a *sine qua non* by some of the cantons, I deem it my duty to agree to it rather than abandon a negotiation which promises other important advantages." In his despatch of September 15, 1846, informing the Secretary of State of the conclusion of the treaty, Mr. King said: "I shall merely add here that I yielded with reluctance the reservation that neither party should be required to give up its own citizens; but, having convinced myself that this point would be insisted upon, and that it was the invariable policy of the Confederation, as illustrated in its treaties with France and Austria, I determined to agree to this modification rather than abandon a negotiation which promised important advantages. From its position, natural features, and complicated jurisdiction, Switzerland is not an unfrequent resort of fugitives from justice, and it is no small matter to have stipulated for the delivery of all such as are not citizens of the confederacy." [For the correspondence mentioned in this paragraph, see D.S., 30 Despatches, France, No. 35, September 15, 1846, and enclosures.]

You will have perceived that the object with which I was specially charged by President Taylor, and to which the distinguished statesman whose opinions I have just quoted attached so much importance, has been fully accomplished [Articles 13–17], and in such a manner as to embrace the expressed views of the Senate on the subject. To such conditions, in her solicitude to have all her citizens abiding in her territory tried before her own tribunals, Switzerland never subscribed before. In justice to Mr. King I may be permitted to state that, in my opinion, no diplomatist could have obtained more at the time than was obtained by himself. It was not until after the commencement of the session of the National Assembly, when an opportunity had been afforded them to ascertain the sentiments of the representatives of the people, that the Federal Council yielded definitely to the condition which I resolved from the first not to modify.

I was instructed to combine with the convention of extradition such stipulations of a commercial character as might be "deemed just and liberal, and best calculated to strengthen the bonds of friendship and alliance between the two sister republics." This trust I have endeavored to discharge so as to completely attain the purpose for which it was so implicitly confided. Happily, I found the government of the Swiss Confederation disposed to establish cordial and equitable commercial and social relations with us; to place us upon a basis that it places no other nation; to assimilate our privileges, in every sense but a political one, upon Swiss soil, with those of native citizens; to cherish our system of polity, national and State, as that most conducive to the welfare of humanity; and to emulate the benign workings of our free institutions.

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I have given to Switzerland nothing, if I am not greatly mistaken, that we have not, at one time or another, given to nations less entitled to our good will and to the enjoyment of our liberality than herself. In return for the commercial favors which we obligate ourselves to bestow upon her—and which our laws at present bestow indiscriminately upon all countries—Switzerland covenants to grant no favors in commerce to States not embraced within her present limits which shall not immediately become common to ourselves. This will prevent her from being drawn into a commercial league with the Zollverein, France, Austria, or Sardinia, on terms adverse to our interests. Whatever product she may admit duty free from any country beyond her frontier—however great the concession to her from that country for such admission—she must likewise admit duty free from the United States. It was a paramount consideration with me to avoid an insertion of the usual clause which runs thus: "If a commercial concession shall be made to any nation by one of the contracting parties, the same shall be enjoyed freely by the other if the same were freely made, or on allowing a compensation as near as possible if the concession was conditional." It is scarcely possible that a voice will ever be raised in the Union to advocate the adoption of differential duties which would operate injuriously to so good a customer for our products as Switzerland. We may, as I believe we will, find it indispensable, at no distant day, to establish retaliatory duties against nations which make a convenience of one or more of our principal staples for raising revenue; but while we keep this republic free from the commercial embraces of its neighbors, we shall, I am very confident, have no cause to direct our legislation against it. We could not reasonably desire a more moderate tariff on our products than that now levied by the Swiss Confederation. For instance, grain of every description pays a duty of 1 batz* per centner, rice 1, salted provisions 25, lard 25, dried vegetables 1, whale oil 2, whalebone 15, tobacco 15, raw cotton 2, cotton twist 15; wool, raw and combed, 2; pot and pearl ashes 2, rosin 2, tallow candles 2. Articles of importation are divided into nine classes, and are uniformly taxed by weight. Those of the first class pay 1 batz per centner; of the second, 2; of the third, 5; of the fourth, 10; of the fifth, 15; of the sixth, 20; of the seventh, 25; of the eighth, 50; of the ninth, (which include luxuries of all kinds,) 100. By a provision of the Swiss constitution raw materials required by manufacturers, as well as the necessaries of life, are to be admitted at the lowest possible rate of duty, while the highest impost that they will bear to advantage is authorized upon articles of luxury. Tobacco is considered in England, France, Austria, and the Italian States as an article of luxury, and is taxed accordingly. Switzerland, although she may so consider it, does not so tax it, but permits 100 pounds of the article to enter her territory for one-half the amount of duty that Great Britain charges for the entrance of a single pound. The government of France, which monopolizes the entire traffic in tobacco, realizes a clear profit on every pound it sells of about 12 cents—one third of the Swiss duty on 100 pounds. As a consequence resulting from the legislation of the three countries upon the subject, France, with a population of 36,000,000, consumes annually of our staple 18,000 hogsheads; Great Britain, with a population of 27,000,000, consumes 22,000 hogsheads; Switzerland, with a population of 2,500,000, consumes 5,000 hogsheads.

In addition to the good that cannot fail to be derived by our industrial pursuits from the securing, for a term of eleven years, such a commercial ally as Switzerland, our countrymen who shall visit the Old World may find a home in its centre where they will be as well protected in their persons and their property as if they were residing in their own native land. To say nothing of the material interests which are to be mutually benefited, the convention will assuredly exercise a salutary moral and political influence upon the two republics, and also upon other countries.

Since the introduction of her present national system, Switzerland has concluded no general convention with a foreign government except that with the United States. In fact, before the adoption of the constitution of 1848, the central authority was precluded from entering into such engagements unless the consent of all the cantons had been previously obtained. Each sovereignty had its own custom-houses—the aggregate number amounting to 360—its own

*The batz is equal to two and three-quarter cents United States currency; the centner, 110 lbs.

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post and military administrations, and paid its own member to the Diet. There was no national treasury. The patriotism of the citizens, rather than the constitution and laws, rescued the country, from time to time, from the dangers which threatened its subversion. The Union existed more by courtesy than by just pretension. It had no head to plan, no hand to direct.

It is necessary, perhaps, that I should submit to you a few more explanatory remarks respecting the convention. The insertion of "reciprocal establishments" in the title, was made at the request of the Swiss plenipotentiaries. It was believed that the employment of these words would contribute to strengthen the affections of the Swiss for America, placing her always uppermost among the nations of the earth in their minds, and thus popularize more and more the new constitution under whose benign operations such privileges were for the first time formally granted.

Religious disqualification to citizenship does not extend to all the cantons of Switzerland. This intolerance is confined only to a portion of them, while each has the right to abrogate it whenever it thinks proper. Any canton may permit an Israelite to become a citizen upon the same conditions as a Christian; and, consequently, one hailing from the United States, to establish himself and trade as though he were a native—a privilege which I am assured will never be denied. In enlightened States the spirit of persecution against man's conscience is fast disappearing, and nowhere with more rapidity than in this republic. It was more than thirty years, if I rightly remember, after the adoption of our constitution, before the Israelites were fully affranchised in Maryland. So long a term will not have elapsed under the new system of Switzerland until every canton is religiously free, as is clearly indicated in all that transpires. Indeed, the existing remnant of the test is maintained more as a precautionary measure to the material well-being of the cantons concerned, than as a demonstration against certain religious tenets. It is considered a safe-guard against the immense itinerant population of Alsace.[1]

The *Droit d'Aubaine* articles [5 and 6], in preference to those concluded at Washington May 18, 1847 [Document 127], were forcibly urged to my consideration by the Swiss plenipotentiaries. I saw nothing in them of an objectionable nature, or that was not in conformity with one of our recent treaties on the subject. [See Article 12 of the treaty with New Granada of December 12, 1846, Document 125.]

I know of no stipulation in the convention that is not calculated to operate advantageously to our country; but if the President or the Senate should entertain a contrary opinion, I doubt not but that the government of the Swiss Confederation would accede to any amendment which might be proposed, not inconsistent with its duties.

The establishment of a legation here by our government, and the appointment of a faithful and capable representative, would, in my opinion, be attended with valuable results to the Union. It is reasonable to calculate that we shall never cease to be interested in the destinies of a republic which—constituted, like our own, upon the *E pluribus unum* principle—has nobly erected and resolutely maintained an altar to freedom in the midst of frowning monarchies. A representative of the United States, if he were personally worthy of it, would be likely to enjoy the confidence of the Swiss government to a greater degree than the representative of any other nation; and, consequently, opportunities would be frequently furnished him for imparting useful intelligence to his country that could not be obtained through diplomatic channels elsewhere. I am warranted

[1] All disabilities of Jews in Switzerland were removed some years later; in respect of France, this was done by the treaty of June 30, 1864 (text in British and Foreign State Papers, LIV, 1101–3); on January 14, 1866, the Swiss Constitution of 1848 was amended by the omission from Article 41 of the words (translation) "belonging to one of the Christian professions" and "belonging to a Christian profession" and by the omission from Article 48 of the words "professing Christianity" (see The Federal Constitution of the Swiss Confederation, September 12, 1848, with Art. XLI and XLVIII as Amended January 14, 1866, 2d ed.; also Martin, History of Switzerland, 278). The revised Constitution of 1874 was explicit on the subject of religious freedom (see Articles 43, 49, and 50).

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in stating to you that if a permanent mission should be established at this metropolis by the United States during the next session of Congress, Switzerland would establish one of a similar grade at Washington when the National Assembly convenes, in March. The two republics would be thus placed in a position to fortify and extend their common principles, and to advance their respective interests.

Fulfilling faithfully her international obligations, and sincerely disposed to maintain good neighborhood, Switzerland desires perpetual peace. She is resolved to give no just excuse to any nation to involve her in a state of belligerence. While she offers an asylum, and supports, at a cost of hundreds of thousands of francs annually, those who seek refuge from the hangman and the headsman of merciless tyrants, she acts upon our policy of suppressing every expedition that may be raised or planned within her limits against a foreign State. If, with such honest, upright intentions, she should hereafter be attacked by an external enemy, it will be attributable solely to the circumstance of her being free. The aggression would be that of inflated autocracy upon unoffending liberty. In such an event we could not fold our arms and console ourselves with the reflection that "we have no bark on the sea, no son in the slaughter."

The convention will be communicated on the 3d proximo, to both branches of the National Assembly, for ratification. A wish has been expressed in several quarters that I should remain here until it was acted upon, and I conceive that I have no alternative but to comply with it. This will probably prevent me from reaching Paris before the 12th, and I have accordingly fixed upon that day, even if I shall be delayed longer, for the termination of my mission.

If the department shall have occasion to write to me, it will please direct its despatches to the care of the United States despatch agent, London.

The instruction to Mann of June 15 and his despatch of November 30, 1850, both of which are quoted above, were before the Senate (Executive Journal, VIII, 289; Senate Confidential Document No. 7, 33d Congress, 1st session, Regular Confidential Documents, XXXIV, 161–66); that fact was found important nearly half a century later (see the discussion below under the heading "Articles 8 to 12").

Some further details are given in the despatch of December 26, 1850, from which this final paragraph is excerpted (D.S., 14 Special Agents, No. 8):

By last Saturday's [December 21] Liverpool steamer I had the honor to transmit to you two copies [not now found in the archives of the Department of State]—one in French, the other in German—of the message, written by the President, with which the Federal Council accompanied the Treaty to the National Assembly.[1] This paper, as you will have perceived, gives a lengthened history of the negotiations and explains minutely the object of the various stipulations contracted between the two Republics. On several points the Swiss plenipotentiaries seem to have misunderstood my remarks, but they are too unimportant to deserve mention, with the exception of the statement that, "it was customary with the United States in their Treaties with other nations to insert the words, "not embraced within their present limits." On the contrary, those words were for the first time introduced, as far as I am aware, in the Treaty just concluded [see Article 9], and, as I took occasion to say, expressly for the purpose of protecting the interests of the United States in Switzerland, against the formation of a Customs' Union by that Republic with the German States, or with France, or Piedmont, or Austria. I also proposed the words "Nation or Union of Nations" to which the Swiss Plenipotentiaries added "State or Society" [see Article 8]. It is proper for me to add that I did not see the message of the Federal Council until after it was laid upon the Clerk's desk in the Assembly. The document is as creditable to the heart and the head of its author and to the free country from whence it emanated, as it cannot fail, particularly its preface, to be gratifying to American citizens. I was furnished with sixty copies of it, and as

[1] A translation from the French of that message of the Federal Council to the Federal Assembly, dated December 3, 1850, is printed below.

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there is no longer any secrecy upon the subject of the Convention, I shall forward a portion of them next week to our Senators in Congress. In a former despatch I informed you that all the deliberations of the National Assembly of Switzerland are in open session.

Subsequently, when presidential and senatorial objections to the real-estate provisions of the convention as signed had been disclosed, Mann took occasion to point out more specifically that "in negotiating, originally, Article V, I had before me a precedent, almost word for word, for said Article, in Article XI [XII] of our Treaty with New-Granada of December 12, 1846" (D.S., 14 Special Agents, No. 25, July 15, 1852); reference to that treaty with New Granada (Document 125) was made in the message of the Federal Council of December 3, 1850, which communicated the convention to the Federal Assembly; that lengthy message seems not to have been heretofore printed in the United States; a copy (in French) is with the note of September 26, 1898, from the Swiss Minister at Washington to the Secretary of State (D.S., 5 Notes from the Swiss Legation); a translation thereof, omitting various textual quotations or paraphrases from the articles of the convention, follows:

Message Accompanying the Treaty between the United States of America and the Swiss Confederation

TO THE FEDERAL ASSEMBLY

For some years, especially since its war with Mexico, the United States of North America, which doubtless never lost the old world from view, has turned its eyes more and more toward Europe and has taken an increasing interest in the events which are here occurring.

Switzerland, among others, although it is not a maritime power, must have drawn its attention particularly, either because of the similarity in the democratic and federative institutions of the two countries, which resemblance constitutes a community of principle and political interest, or because Switzerland, which has been able to enforce respect for its independence in recent years as well as in former times, came out of the crisis which is still keeping so many peoples in a ferment with a more homogeneous and stronger constitution, or because the many emigrations of Swiss to America, where they have founded several colonies which bear the names of States and cities in the mother country, are daily increasing the relations between the two peoples, or, lastly, because the United States and Swizerland find in each other a great outlet for their products.

This harmony of sympathies and interests explains the marks of good will which the two nations have given each other on various occasions. Thus, some citizens of the United States have seen fit to give their vessels names which are dear to Switzerland, such as *William Tell*, and the Federal Council answered that homage by raising the Swiss flag on the mainmast of those vessels. The United States will build into the colossal monument which it is raising to the memory of its liberator, the immortal Washington, the stone and the inscription which will be dedicated to him by the Federal Government of Switzerland, like the States and cities of the Union.

It is therefore not surprising that the President of the United States has sent to the Confederation a Plenipotentiary, under the name of Special Agent, to show the high esteem that Switzerland enjoys in the great nation of the new world, to extend to her a fraternal hand in the very midst of the storms with which she was threatened, and to offer her a treaty of friendship whereby the two freest peoples on earth will treat each other reciprocally on a footing of equality.

It is the first time that the Confederation has been honored by such an embassy from the United States: this proves that while fulfilling her international duties and thus maintaining her good relations with European governments, Switzer-

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land has won the consideration and the sympathies of the people of the United States, to whom no one will refuse to acknowledge a sentiment of national dignity as lofty as it is enlightened.

And in order to render more striking the evidence of its friendly disposition toward us, the Government of the United States has chosen as its envoy one of the eminent statesmen of America, as distinguished for his integrity, his prudence, and his skill as for his devotion to the cause of democracy, Mr. Ambrose Dudley Mann, who has already fulfilled similar missions to the entire satisfaction of his principals.

After the envoy of the United States had advised the President of the Swiss Confederation and the head of the Department of Commerce and Tolls of the object of his mission and had delivered his proposals to them in writing; after the representatives of the Confederation had reported those proposals to the Federal Council, received its instructions, and transmitted to Mr. Mann their written proposals; after the Plenipotentiaries of the two parties had, in several conferences, explained the views of their principals, agreed upon the content and the form of the articles in French and in English; they signed, on November 25, 1850, subject to ratification, the General Treaty of Friendship, Reciprocal Establishments, Commerce, and Extradition of Criminals which we have the honor to submit to the Federal Assembly for its approval.

Although the nineteen articles of which this treaty is composed are related to each other, they nevertheless form the subject matter of different conventions, to wit:

1. The establishment of the citizens of one of the countries in the other;
2. The disposal or escheat (*détraction*) of property;
3. Consulates;
4. Commerce;
5. Extradition of criminals.

It has been deemed preferable to assemble these conventions in a single treaty, both for convenience and because the friendship with which the parties are animated with regard to each other is better manifested by the whole group of those provisions.

Let us now review the articles [1] of the treaty.

1. Establishment of the Citizens of One of the Countries in the Other. (Articles 1, 2, 3, 4)

ARTICLE 1

This fundamental article lays down the principle which governs the whole treaty: [Here is quoted the opening paragraph of the article.]

Equality is therefore the rule; differences the exception.

As the two contracting Republics are not unitary, but federative States, it is first specified: [Here are quoted paragraphs 2 and 3 of the article.]

It is understood that this provision applies to the territories of the American Union which, not yet forming States because they have not attained the necessary population, are placed under the direct system of the central power of the United States. This intention was not expressed in the treaty because those territories, not very numerous now, will before long become States of the Union.

The foregoing provisions might have sufficed; but, in order to bring out their full meaning and because in the United States they desire to list things specifically, Article 1 next enumerates the principal consequences or applications of the general principle laid down at the beginning. Thus, provided that they conform to the laws of the country in which they reside, United States citizens and Swiss citizens may go, come, sojourn, reside, or establish themselves, the former in the cantons of the Helvetian Confederation, the Swiss in the States of the American Union; there acquire, possess, and alienate movable and immovable property, manage their affairs there, and practice their professions, their industry, and their commerce there, either personally or through others; enforce their rights there in courts of justice in the same manner as nationals;

[1] I.e., the articles of the instrument signed on November 25, 1850; four of these, Articles 1, 5, 6, and 19, were materially altered before ratifications were exchanged.

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no pecuniary or other condition shall be imposed, on account of residence or establishment or on account of the exercise of their rights, more burdensome than on the citizens of the country in which they reside, nor any condition that would not be binding on the latter. In these developments Article 41 of the Federal Constitution,[1] as well as the treaties with France [2] and Sardinia,[3] were kept before us.

The exceptions to the general rule of equality follow.

The first exceptions are common to the two parties: [Here is a close paraphrase of the penultimate paragraph of the article.]

The other exception is peculiar to Switzerland. Free establishment not being guaranteed by the Federal Constitution except to Swiss of one of the Christian confessions, it cannot be assured by convention to foreigners of another religion. This reservation came from a fundamental source, as the Federal Constitution cannot be derogated by conventions; but it has been thought necessary to state it expressly in order to avoid any misunderstanding in the United States and in order to indicate that the Swiss Cantons are not obliged to avail themselves of the right which the Federal Constitution grants to them of excluding non-Christians.

As the Constitution of the United States does not admit of this difference between religions, the reservation could not be stipulated in their favor.

Article 2

Article 2 regulates that which concerns taxes and various contributions, with the exception of the financial factors for establishment and the exercise of the rights attaching thereto, which have appeared to be more in place in the preceding article.

Article 2 is only a development and an application of the principle of equality set forth at the head of the treaty, for it stipulates that "the citizens of one of the countries residing or established in the other shall be, in respect of taxes, on the same footing as the citizens of the country where they reside"; but as other consequences of the principle were brought out, it was not possible to pass over in silence so essential a point as that of the taxes, all the more because the financial system of the two contracting parties is not on all points the same.

Furthermore, the difficulties which some Cantons have had with France and Sardinia on the subject of pecuniary contributions required in compensation for exemption from personal military service have rendered perceptible the necessity of a categorical explanation by stipulating that [Here is quoted the opening paragraph of the article.] This explanation is all the more proper because compensations of that kind are not known in the United States of America.

It is understood that those contributions will not dispense the citizens of one of the two countries residing or established in the other from paying the general war contributions which might be levied on the citizens of the country where they reside, without distinction between those who are exempted from personal military service and those who are held to it; they shall be subject thereto as well as to all other taxes required from citizens of the country themselves. This appears from the wording of the article, and such is the intention of the parties.

It is clear also that by residence is understood not a temporary sojourn of a few weeks or a few months, but a fixed domicile which, without having the permanent character of establishment properly so-called, nevertheless implies a certain duration. Thus there will not be required of American citizens who come to make a trip or pass the fine season in Switzerland, the contributions in compensation for personal military service nor the other taxes to which Swiss citizens residing or established on the soil of the Confederation are subject; neither shall those taxes

[1] For the text, in French, of the Swiss Constitution of 1848, see British and Foreign State Papers, XLVII, 1245–65.

[2] Of May 30, 1827, and July 18, 1828; the texts are respectively in British and Foreign State Papers, XIV, 820–22, and XV, 773–76.

[3] Of May 12, 1827; the text, with extension of duration to July 1, 1847, is in British and Foreign State Papers, XXVI, 1059–66; see also the treaty of June 8, 1851, in *ibid.*, XL, 1196–1202.

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be required of Swiss citizens who travel in the United States or make a short sojourn there.

For the reasons indicated above, it has also been thought useful to contemplate the damages suffered in case of war and expropriation by reason of the public interest: here also the citizens of the two Republics are placed on the same footing.

ARTICLE 3

[The article is here quoted.] Thus individuals naturalized in the country where they reside cannot be deported.

The article in question is the reproduction of the provisions of the Federal Constitution as well as of the treaties with France and Sardinia.

ARTICLE 4

The nationality of the citizens of the two Republics shall be proved by means of passports or other papers in due form delivered or visaed by the respective consular agents. This is the generally followed rule.

2. Disposal or Escheat (Détraction) of Property. (Articles 5 and 6)

ARTICLE 5

The *traite foraine*[1] between the United States of America and the Swiss Confederation was abolished by the convention[2] concluded for twelve years in 1847 and ratified in 1848. But that convention makes a difference between *movable* or personal property and *immovable* property. According to the convention of 1848, the citizens of each of the two contracting parties can dispose freely, either by testament, donation, or in any other manner, of their *personal property*, in the jurisdiction of the other, and their heirs, citizens of the other party, shall succeed to that property, they shall be able to take possession thereof and dispose thereof as they see fit, having no other dues to pay than those to which in like case the inhabitants of the country itself in which the said property is located are liable; but if, as the result of the death of a person possessing *real property* in the territory of one of the contracting parties, such property should, by virtue of the laws of the country or by a testamentary provision, come to fall to a citizen of the other country who, because of his status as a foreigner, would not be permitted to possess said property in kind, such heir would be allowed a term of three years at least to sell such property, to secure and to export the proceeds thereof without difficulty and without paying to the government any transfer tax than that which in an analogous case would be payable by an inhabitant of the country in which the real property is situated.

This difference between movable and immovable property, which still exists in conventions between the United States and several other nations, now disappears in the treaty submitted to you for approval, and real property is placed on the same footing as personal property, so that free disposal extends to the one kind as well as to the other, and the last vestiges of the *traite foraine* which the convention of 1848 allowed to remain will have completely disappeared as regards the United States and the Confederation. This new stipulation, drawn from a recent treaty[3] between the Union and New Granada, is more particularly favorable to Switzerland.

The provisions of the preceding convention for the conservation of the movable property of heirs or of other absent successors will extend in the future to all property without distinction.

The convention of 1848 will thus be replaced by Articles 5 and 6 of the present treaty. This has not been expressed therein because it is understood of itself, for a convention is always abrogated by later articles.

[1] See on this expression the editorial notes to Document 127.
[2] Document 127.
[3] Document 125, Article 12.

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ARTICLE 6

[The article is here quoted.]

This stipulation, which is a little vague, is the reproduction of 1848.[1] Those expressions, "the courts and the laws of the country in which the property is situated", might be differently interpreted. They ought to mean the judges and the laws of the country in which the succession is opened, because ordinarily it is there that the property or the greater part thereof is situated, so that the judgment rendered by those judges would apply to all the property forming part of the estate, in whatever country it may be situated. That was the intention of the parties in 1848, as appears from the context of this clause in the convention of that time and from the place which it occupies therein. But those expressions might be understood in this sense, namely, that the question of knowing to whom the property forming part of a succession belongs, shall be decided by the judges and according to the laws of the country where each fraction of the property is located—thus by the laws of the United States as regards the property located there and by the laws of Switzerland as regards property situated in the Helvetian Confederation; in short, by the judges and in accordance with the laws of any other country for the property or fraction thereof which might be located there.

In order to clear up these doubts and approach what is generally accepted regarding the application of statutes, the Federal Council proposed that the disputes in question should be brought before the judges of the place where the succession is opened (that is to say, the place of the last legal domicile of the deceased); that the difficulties relative to the exterior form of donations, testaments, or other acts should be judged according to the laws of the place where the act was executed; that the capacity of giving, bequeathing, or contracting should be regulated by the country of origin of the person who has made the disposal, and the tenor itself of the acts, according to the laws of the country where they must work their effect.

These proposals could not be accepted by Mr. Mann, either because in the United States it is not permissible for judges to render an opinion according to other laws than those of the country or because in some given case the same court might be called upon to judge a dispute under the laws of two or three countries according as the origin of the person who has made the disposal, the place where the act was executed, and that where it must work its effects might belong to different countries, which might bring about complications and delays when proof of those laws would have to be submitted.

And for fear that an essential change from the wording accepted in 1848 might bring about some unforeseen obstacle in the United States Senate, where it is greatly desired to preserve in judicial matters the expressions consecrated in other treaties, the respective Plenipotentiaries have maintained the text adopted in 1848, being very certain that it will be given no other meaning than that which was given to it before and which has been indicated above.

3. Consulates (Article 7)

ARTICLE 7

The provisions of the treaty relating to consuls and vice consuls are quite generally accepted. Thus, they must have been recognized by the government of the country in which they have to exercise their office. In their private and commercial affairs they are subject to the ordinary laws. In the exercise of their functions they enjoy certain privileges. In case of violation of the laws, the government of the country where they reside may, according to circumstances and the gravity of the case, withdraw the exequatur from them, send them away, or have them punished according to the laws. But the archives and papers of the consulate are inviolable. In the conventions between the United States and various nations such inviolability is more categorically expressed and seems more extensive than elsewhere.

[1] See Document 127, Article 1.

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4. Commerce (Articles 8, 9, 10, 11, and 12)

The clauses of the treaty are as liberal as possible.

ARTICLE 8

It is established as a principle that: [The article is here quoted.]

This principle receives two applications, one relative to the *raising*, the other relative to the *reduction* of tariffs.

ARTICLE 9

The first of these applications is Article 9, which states: [The article is here quoted.]

These words, *outside its present boundaries*,[1] consecrated in the treaties of the United States with other nations, mean that if the said States formed a customs union with Mexico, for example, or if Switzerland entered into a Zollverein, the products of such customs unions would not benefit from the maximum stipulated in Article 9.

Among *industrial products* are included products of fishing carried on in any waters, thus, as regards the inhabitants of the United States, the products from whale fishing in seas outside of its territory.

The article with which we are concerned will doubtless permit the contracting parties to raise the duties on their respective products or to collect on said products duties other than those now existing, provided that the same increase or the same collection is imposed on like products coming from any other country; but this obligation will be a guaranty against the abuse of the right which the parties have reserved for themselves, because by raising the duties or imposing new duties on certain products from all countries, one runs the risk of very harmful retaliations, and it is sufficient that the increase of the existing duty or the collection of the new duty be abandoned with regard to one single nation, for the contracting party to benefit therefrom.

The Special Agent of the United States had proposed the introduction into the treaty of a clause which is found in the commercial conventions [2] of the United States with other nations, namely: "Likewise, no *prohibition* of the exportation or of the importation of the products of one of the contracting parties shall be enacted in the other which is not equally and immediately applicable to every other country not embraced within its present limits". But, upon representations that were made to him, Mr. Mann waived a provision which might open the door to the system of prohibition.

ARTICLE 10

In compensation for the power of raising duties is Article 10, relative to reduction, which says: [The article is here quoted.]

In the treaties of the United States with other nations, this stipulation is made with the reservation that if the favor has been freely accorded to another nation, the extension to the contracting party takes place without indemnity, but that if it has formed the subject of a condition, the extension is made only subject to an equitable compensation.

Although much importance is attached to this clause in the United States, Mr. Mann waived it out of friendly consideration for Switzerland. By way of compensation, he proposed to insert in the treaty an article which would have read that "In consideration of the extensive and increasing consumption of Swiss products in the United States, the Confederation engages not to increase the import duties now levied on raw tobacco, rice, fish-oil, cotton, and potash produced in the United States."

[1] In the English of the convention, "not embraced within its present limits". The comment of Mann on the remark here, made in his despatch of December 26, 1850, is quoted above.

[2] See, for example, the final clause of Article 5 of Document 125.

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The delegates of the Federal Council pointed out that the clause is not at all necessary, since by virtue of the Federal Constitution those articles, which are materials necessary to the industry of the country and to life, *must be taxed as low as possible* and are actually so taxed; that the best guaranty that those duties will not be raised is the need that Switzerland has for them; that the proposed clause would be a great hindrance to the Confederation if, when it revised its tariffs, it should find it necessary to raise slightly the duties on one of the said articles in order to be able to lower them on another; that the Confederation could not subscribe to a provision which would bind it only, without the United States being bound to the equivalent, and that the wide market offered to Swiss products by the United States cannot be considered as equivalent, because the said products are not the only ones on that market and Switzerland imports and consumes more goods of the United States than the latter does of Swiss products. That consequently, if Mr. Mann insisted upon the insertion of the clause, the Confederation could not admit it except on two conditions, namely:

1. That the duties on the articles in question would not be raised by the Confederation except in such measure as shall be necessary to equalize in the tariffs the very small differences which will result from the transition of the present monetary system of Switzerland to the French decimal system;

2. That, in compensation, the United States undertakes not to raise its import duties on silk and cotton goods, cheese, clocks, watches, and jewelry that it obtains from Switzerland.

Mr. Mann having declared that the United States Senate would not ratify this second addition, because it does not desire to tie its hands in that respect, and that, moreover, tariff questions fall within the sphere of Congress, the Federal delegates announced, for their part, that the Federal Assembly would certainly not ratify the addition proposed by the American Agent.

But in waiving it, Mr. Mann proposed to add to Article 10 a second clause, in which it would have been said: "The United States agrees the more willingly to this stipulation, since the Swiss Confederation has introduced into its Federal Constitution certain liberal provisions which are particularly favorable to the products of the United States."

However flattering this addition might be for Switzerland, the Federal delegates did not deem that they could agree to it, because it might have been interpreted as if the provisions in question of the Federal Constitution were the subject or the condition of one of the stipulations of the treaty. This interpretation was very far from Mr. Mann's intention, but its possibility was sufficient for the delegates of the Federal Council to be obliged to reject a passage which will be more in place in the report which the Special Agent of the United States will make to his principals.

Article 11

The manner of determining the origin of products had also to be provided for in case one of the parties should impose differential (or higher) duties on the products of any nation; for as long as the duties on the products imported are, on either side, the same for all nations, the government of the country which imports them does not care about their origin, so far as the collection of duties is concerned, the shippers being free to verify it as they see fit, when they have an interest in doing so. [Here is a close paraphrase of the article.] As usage varies in different places, the contracting parties reciprocally trust to the declarations of the respective officials attesting the origin of the products.

Article 12

This article includes various provisions.

1. The first clause assures the receipt of the goods in both countries: "the territory of each remains open to the admission of articles coming from the other". As Switzerland, in consequence of her geographical position, has no merchant marine, it had to be stipulated that "articles arriving from Switzerland shall be admitted to the United States, provided they are conveyed in vessels of those States or in any other vessel having free access to the ports of the Union". Swiss

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goods pay the same duty as those of the countries to which the vessel belongs, except, of course, when they arrive under the flag of the United States, in which case they pay the same duties as those of the most favored nations.

2. [Here is quoted the second paragraph of the article, regarding shipwreck and salvage.] Swiss merchandise must therefore be placed in safety, of course, and upon payment of charges on the same footing as United States citizens, others must be prevented from taking it. This obligation, which is the application of the principle of reciprocal equality stated at the beginning of the treaty, could not be contracted by the Swiss Confederation, since it has no maritime coasts. However, it is clearly understood, and such is the sense of the first article, that if goods of United States citizens should require to be salvaged on our territory, they will be treated like those belonging to Swiss citizens.

3. [Here is quoted the third paragraph of the article.] This advantage, which is an application of Article 8, can be offered only by a maritime nation.

4. The three foregoing provisions cannot in any way derogate from the above articles relating to trade; thus Swiss products arriving under the United States flag or which have been salvaged on its coasts, will pay for importation the same duties as those of the most favored nations. That is specially reserved under No. 1 of this Article 12, but it was deemed well to add a general reservation to avoid any misunderstanding, among others in order that it might not be inferred, from the fact that in case of shipwreck and salvage Swiss articles will be treated as those belonging to citizens of the United States, that the said articles are exempted from entrance duties if they are imported.

But another reservation had necessarily to be expressed, namely that *the provisions of Article 12 in no way derogate from the measures taken or which may be ordered in either of the contracting countries in the interest of morality, public safety, or public order.* As a matter of course, it cannot be allowed that, under the pretext of trade and free entry, articles may be introduced which are either prohibited in the interest of good order or would compromise the safety of Switzerland through the use for which they were intended. Such would be spoiled matter or matter injurious to health; arms and munitions sent to a part of Switzerland at war with the Confederation, or which should be intended for use in enterprises incompatible with the international duties of Switzerland, or which should have a destination contrary to her neutrality when she intended to remain neutral. It is evident that the measures reserved above have nothing in common with prohibitions ordered with a view to trade or industry, constituting the protective system in contrast to free trade.

5. Extradition of Criminals. (Articles 13, 14, 15, 16, and 17)

In 1846 the Minister of the United States and the Swiss Chargé d'Affaires at Paris agreed upon a draft treaty [1] whereby the two parties granted reciprocally the extradition of criminals. The treaty was ratified by the United States Senate, with the exception of the clause reading: "with the distinct understanding however, that in no case shall the high contracting parties be required to deliver up their respective citizens", a clause which closed Article 1 and to which the Cantons attached great importance.

The articles relating to the extradition of criminals proposed by Mr. Mann in the treaty with which we are concerned are the same as those adopted by the United States Senate in 1846.

Thus:

ARTICLE 13

[The article is here quoted.]

Although the reasons which determined the Federal Authorities in 1846 to make the reservation that the parties should not be bound to deliver up their respective nationals, had considerable value, the Federal Council did not deem fit to insist on that clause, because it would be completely useless, and there are no reasons sufficient for renouncing a treaty on extradition rather than to consent

[1] D.S., Unperfected N3; September 15, 1846.

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to deliver up nationals accused of serious crimes. Indeed, the Minister of the United States said in 1846 that "despite the most liberal solicitude with which the United States would try always to protect its citizens everywhere, his Government made no difficulty of granting the extradition of nationals who, as criminals, had rendered themselves unworthy of such protection". Communications between the two countries are now so easy and so rapid that Swiss criminals and those of the United States would easily escape the vengeance of the laws if they found an asylum assured in their country of origin, and that impunity, which would wound the sentiment of justice, would injure numerous and serious interests. The first condition of residence in a country is to submit to its laws and the various chances of their application. And the institutions of the state to which one undertakes to deliver nationals accused of crimes are a determining motive in such matter: now, the United States has the jury and judicial institutions which offer large guaranties. So, France, which has always been very difficult in extradition matters, did not introduce the reservation relating to nationals in her treaty [1] with the American Union. Another guaranty is the clause according to which extradition will not be obligatory except in a case where the acts of which the accused is charged are proved in such manner as to justify his arrest and trial, if the crime had been committed in the country where the individual was found. In this way, although the crime must be proved and classified according to the legislation of the party requesting [the extradition], the other party none the less retains an efficacious means of protecting its nationals in case of need: it can refuse the extradition if the acts with which the accused is charged are not punishable under its laws, or if they are not sufficiently proved, or if they do not seem to be serious enough; and, as will be seen from Article 15, the party of which the extradition is requested remains the judge of those questions.

ARTICLE 14

[The article is here quoted.]

Although the Minister of the United States at Paris in 1846 refused to add fraudulent bankruptcy to the crimes listed above, because the legislation of those States does not contain any special provision on cases of that nature, which are always difficult to define, the Federal Council deemed fit, in view of the time which has elapsed since then, to propose to add to the crimes which give rise to extradition not only fraudulent bankruptcy but also several other serious offenses, fully as dangerous and as deserving of punishment as those listed in Article 14, such as (placing them in their proper order):

Abortion;

Abandonment of persons;

Abduction, concealment, suppression, substitution, or supposition of a child or any other person;

Serious bodily injuries;

Infringement of individual liberty and violation of domicile;

Threats of assassination, of poisoning, of arson, or of any other serious crime, with a view to intimidation in order to make one do something or prevent one from doing something;

Besides arson, flooding and other serious crimes having for their effect the destruction or grave damage to property;

The destruction, suppression, or abstraction of titles and official or public documents, or documents belonging to others;

Counterfeiting or issuance of counterfeit money;

The counterfeiting, alteration, or fraudulent use of official seals, strikers, or stamps;

Perjury;

Theft, swindling, and fraud;

The attempt to commit the crimes and offenses listed above, when they are susceptible thereof.

[1] Documents 103 and 112.

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In order to give rise to extradition, these crimes or offenses should carry either a penalty involving loss of civil rights or some years' imprisonment (for example, three or four years, if close confinement [*réclusion*] or forcible restraint [*force*] is involved, five or six years in case of correction), or a certain number of thousands of francs fine, according to the legislation of the country requesting the extradition.

But in order to avoid a long list of crimes or offenses, and, as the gravity of the acts with which the accused is charged, as well as society's interest in the extradition, consists less in the denomination of the action to be punished than in the penalty fixed in the laws against the guilty parties, the Federal Council proposed to draw up Article 14 as follows:

"Persons shall be delivered up, according to the provisions of this convention, who are charged with a crime or offense which, by the laws of the party requesting extradition, may carry a penalty involving loss of civil rights or imprisonment for . . . years, or a fine of more than . . . francs." Of course, the final clause of Article 13, relative to the gravity which the acts must have according to the laws of the party of which the extradition is requested, would apply to this general wording as well as to a list of offenses.

While acknowledging the conformity of the Federal Council's proposals with the progress in penal law and the present needs of society, Mr. Mann was unable to adhere to them for various reasons: first, the precision of his instructions did not permit him to do so; then, the treaty as a whole will be more easily ratified by the United States Senate if it has presented to it, regarding the extradition of criminals, the articles drawn up as it accepted them in 1846, than if it is called upon to deliberate on extensions of the former stipulations; finally, the legislation of the States of the Union would again be, for the time being at least, an obstacle to innovations.

For these reasons, the Federal Council did not insist on its proposals.

Neither did it insist upon the inclusion of other articles which are found in the treaties of the Confederation with other states, as Mr. Mann did not believe himself authorized to adhere to them. The subject of those articles is, among others: the judicial documents to be submitted in support of the request for extradition; the reservation that if the accused is tried or sentenced in the country from which his extradition is sought, the latter will not be bound to deliver him until he has served his sentence, and that the extradition cannot take place if the time limitation for the prosecution or the sentence has expired according to the laws of the country in which the accused has taken refuge; the provisions relating to the return of stolen articles, either found in the possession of the accused or capable of serving as proof of the crime; to the hearing of the witnesses by their natural judge and their personal appearance before the judge who is preparing the prosecution; to the complicity of witnesses; to the punishment of the guilty party in the country where he has taken refuge, when the party entitled to request extradition so prefers.

These provisions shall be supplemented partly by a *modus vivendi* which shall not fail to be drawn up, partly by the following article combined with the final clause, several times recalled, of Article 13.

ARTICLE 15

[The article is here quoted.]

It will therefore be for the Federal Government of the party of which the extradition is requested to judge whether the request for extradition is sufficiently well grounded and supported by the necessary documents.

ARTICLE 16

[The article is here paraphrased.]

ARTICLE 17

[The article is here paraphrased.]

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6. General Provisions (Articles 18 and 19)

ARTICLE 18

[The article is here paraphrased.]

That is a large guaranty against the consequences of the error which the parties or one of them might have committed, or against the effect of the divergences which might arise as to the meaning of the articles. We have thus the means to make such changes in and explanations of the convention, the necessity for which might be shown by experience.

ARTICLE 19

This article [is here paraphrased].

Such is the group of stipulations of the treaty submitted for your approval and the reasons which dictated them. This treaty seems to us advantageous to Switzerland as well as to the United States, and to the latter as much as to the Confederation. The distinguishing characteristic of any just and durable convention is that each of the parties finds an advantage therein. Therefore, while carefully watching over the rights and interests of their respective principals, the Plenipotentiaries of both parties have none the less had in view the good of the country with which they were concluding a general treaty of friendship. Explanations were given with complete frankness on both sides, both on the purpose which is proposed and on the possible scope of the articles of the convention. We take pleasure in acknowledging that, whenever his instructions and the interests that he represented permitted him, the Special Agent of the United States acceded without difficulty to what was requested by the Federal delegates and waived the proposals which the latter could not accept; on their part, the representatives of the Confederation used reciprocity to the full extent of their powers.

We therefore do not hesitate to suggest to you in advance that you approve the convention and charge us to ratify it.

To this end we have the honor to propose to you the following draft decree:

THE SWISS FEDERAL ASSEMBLY

Having taken cognizance of the General Treaty of Friendship, Reciprocal Establishments, Commerce, and Extradition of Criminals between the Swiss Confederation and the United States of America, concluded, in nineteen articles, subject to ratification, at Bern November 25, 1850, by the respective Plenipotentiaries of the parties;

In view of Article 74, section 5, of the Federal Constitution;

In view of the proposal of the Federal Council,

DECREES:

Article 1

The said treaty is approved in full.

Article 2

The Federal Council is charged to ratify it in the name of the Swiss Confederation and provide for its execution as soon as the ratifications thereof have been exchanged.

Given at Bern December 3, 1850.

(Signatures)

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The Articles Amended

Nearly five years elapsed between the signature and the exchange of ratifications of this convention (November 25, 1850, and November 8, 1855); this delay was caused by changes proposed and made in Articles 1, 5, 6, and 19 of the convention. The text of those four articles as first written appears below.

On December 16 and 17, 1850, the Federal Assembly (*Bundesversammlung* or *Assemblée fédérale*), the national legislature of Switzerland under the Constitution of 1848, composed of the National Council (*Nationalrat* or *Conseil national*) and the Council of States (*Ständerat* or *Conseil des États*), unanimously approved the convention as signed, and the Federal Council (*Bundesrat* or *Conseil fédéral*), the federal executive, was charged with the ratification thereof (D.S., 14 Special Agents, Nos. 8 and 10, December 26 and 31, 1850, and enclosures). By those proceedings the convention became public, as the deliberations of the Swiss legislative bodies were in open session (*ibid.*, Nos. 8 and 9, December 26 and 27, 1850); and memorials of American citizens, Israelites, against certain provisions of the convention (the final paragraph of Article 1) were presented to the Senate during its first consideration by that body (Executive Journal, VIII, 311, March 5, 1851).

In the convention as signed on November 25, 1850, Articles 1, 5, 6, and 19 read as follows (collated with the second original):

Article I.

The citizens of the United States of America and the citizens of Switzerland shall be upon a footing of reciprocal equality in their respective countries; they shall enjoy therein the same rights and be submitted to the same obligations, under the following limitations and reservations:

In the United States of America, citizens of Switzerland shall be received and treated, in each State, upon the same footing and upon the same conditions, as citizens of the United States born in or belonging to other States of the Union.

In like manner, in Switzerland, citizens of the United States shall be received and treated, in each Canton, upon the same footing and upon the same conditions as citizens of Switzerland originating in or belonging to other Cantons of the Confederation.

Accordingly, provided they mutually conform to the laws, regulations and usages of the country in which they reside, the citizens of the United States and the citizens of Switzerland, as well as the members of their families, shall be at liberty to come, go, sojourn temporarily, domiciliate or establish

Article I.

Les citoyens des Etats-Unis d'Amérique et les citoyens Suisses seront sur un pied d'égalité réciproque dans leurs pays respectifs; ils y jouiront des mêmes droits et y seront soumis aux mêmes obligations, dans les limites et sous les réserves ci-après:

Aux Etats-Unis d'Amérique, les citoyens Suisses seront reçus et traités, dans chaque Etat, sur le même pied et aux mêmes conditions que les citoyens des Etats-Unis natifs ou ressortissants des autres Etats de l'Union.

De même, en Suisse, les citoyens des Etats-Unis seront reçus et traités, dans chaque Canton, sur le même pied et aux mêmes conditions que les citoyens Suisses originaires ou ressortissants des autres Cantons de la Confédération.

En conséquence et pourvu que, de part et d'autre, ils se conforment aux lois, réglemens et usages du pays où ils résideront, les citoyens des Etats-Unis et les citoyens Suisses, ainsi que les membres de leurs familles, pourront aller, venir, séjourner temporairement, prendre un domicile fixe, ou s'établir

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themselves permanently, the former in the Cantons of the Swiss Confederation, the latter in the States of the American Union; to acquire, possess and alienate therein personal and real estate; to manage their affairs, to exercise their profession, their industry and their commerce, to have establishments, to possess ware-houses, to consign their products and their merchandize, and to sell them by wholesale or retail, either by themselves, or by such brokers or other agents as they may think proper; they shall have free access to the Tribunals and shall be at liberty to prosecute and defend their rights, before Justice, in the same manner as native citizens, by themselves, or by such advocates, attorneys, or agents as they may think proper to select. No pecuniary or other more burdensome condition shall be imposed upon their residence or establishment, or upon the enjoyment of the above-mentioned rights, than shall be imposed upon citizens of the country where they reside, nor any condition whatever, to which the latter shall not be subject.

The aforegoing privileges, however, shall not extend to the exercise of political rights, nor to a participation in the property of communities, corporations or institutions, of which the citizens of one party, established in the other, shall not have become members or co-proprietors.

On account of the tenor of the Federal Constitution of Switzerland, Christians alone are entitled to the enjoyment of the privileges guaranteed by the present article, in the Swiss Cantons; but said Cantons are not prohibited from extending the same privileges to citizens of the United States of other religious persuasions.

ARTICLE V.

The citizens of each of the contracting parties shall have power to dispose of their personal goods and real estate, within the jurisdiction of the other, by sale, testament, donation or otherwise, and their heirs or successors, being citizens of the other party, shall succeed to the said property, and they may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the

d'une manière permanente, les premiers dans les Cantons de la Confédération Suisse, les Suisses dans les Etats de l'Union américaine; y acquérir, posséder et aliéner des propriétés mobilières et immobilières; y gérer leurs affaires, y exercer leur profession, leur industrie et leur commerce, y avoir des établissemens, y tenir des magasins, y consigner leurs produits et leurs marchandises, les vendre en gros ou en détail, tant par eux-mêmes que par tels courtiers ou autres agents qu'ils jugeront convenable; ils auront libre accès devant les Tribunaux et pourront faire valoir leurs droits en Justice, à l'instar des nationaux, soit par eux-mêmes, soit par tels avocats, avoués ou agents qu'ils trouveront convenable de choisir. On ne pourra leur imposer pour la résidence, ou l'établissement, ou pour l'exercice des droits mentionnés plus haut, aucune condition pécuniaire ou autre plus onéreuse, qu'aux citoyens du pays dans lequel ils résident, ni aucune condition à laquelle ceux-ci ne seraient pas tenus.

Ne sont cependant pas compris dans les avantages mentionnés ci-dessus, l'exercice des droits politiques et la participation aux biens des communes, des corporations ou des fondations dans lesquelles les citoyens de l'un des pays, établis dans l'autre, n'auraient pas été reçus membres ou à titre de co-propriétaires.

Vu la teneur de la Constitution fédérale de la Suisse, les Chrétiens sont seuls au bénéfice du présent article dans les Cantons Suisses; ce qui n'empêche cependant pas ces Cantons d'en laisser jouir les citoyens des Etats-Unis professant d'autres croyances religieuses.

ARTICLE V.

Les citoyens de chacune des parties contractantes pourront librement disposer de leurs propriétés mobilières et immobilières, sises dans la juridiction de l'autre, par vente, testament, donation ou de toute autre manière, et leurs héritiers ou successeurs, citoyens de l'autre partie, acquerront ces propriétés et pourront en prendre possession eux-mêmes ou par fondés de pouvoirs; ils pourront en disposer comme ils l'entendront, n'ayant à payer d'autres droits que ceux auxquels sont soumis en pareil

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country, wherein said property is situated, shall be liable to pay in like cases. In the absence of heirs or other successors, the same care shall be taken by the authorities, for the preservation of the property, that would be taken for the preservation of the property of a native of the same country, until the lawful proprietor shall have had time to possess himself of the same.

ARTICLE VI.

Any controversy that may arise among the claimants to the same succession, as to whom the property shall belong, shall be decided according to the laws and by the Judges of the country, in which the property (whether personal or real) is situated.

ARTICLE XIX.

This Convention shall be submitted, on each side, to the approval and ratification of the respective competent authorities of the two contracting parties; And the ratifications shall be exchanged in the City of Berne within twelve months from the date hereof, or sooner if possible.

cas les habitants mêmes du pays dans lequel ces biens sont situés. En l'absence des héritiers ou des autres successeurs, l'autorité prendra, pour la conservation des dites propriétés, les mêmes soins que s'il s'agissait de la propriété d'un natif du même pays, et cela jusqu'à ce que le propriétaire légal des biens ait eu le temps de s'en mettre en possession.

ARTICLE VI.

Les contestations qui pourraient s'élever entre les prétendans à une succession, sur la question de savoir à qui les biens doivent appartenir, seront portées devant les tribunaux et jugées d'après les lois du pays dans lequel la propriété (mobilière ou immobilière) est située.

ARTICLE XIX.

Cette Convention sera soumise de part et d'autre à l'approbation et à la ratification des autorités compétentes respectives de chacune des parties contractantes; Et les ratifications en seront échangées, à Berne, dans douze mois à dâter d'aujourd'hui, ou plus-tôt si faire se peut.

THE VIEWS OF WEBSTER

Following the receipt at Washington of the two despatches of Mann of November 25 and 30, 1850 (both cited, and the latter quoted, above), with which were respectively enclosed the first and second originals of this convention, there was some interesting correspondence (now in the treaty file) between President Fillmore and Secretary of State Webster. Webster saw "nothing to object to" in the convention as signed; he sent it for presidential consideration with this brief letter of January 7, 1851:

I send, for your perusal, a General Convention, concluded at Berne, in Switzerland, by Mr A. Dudley Mann, on the part of the United States; — and, by Messrs Druey and Frey-Herosee, on the part of the Swiss Confederation, — together with Mr Mann's communication [1] to this Department, explanatory of its several articles.

I see, in the Convention, nothing to object to; and, if such should be your view of it, please return it to this Department, that the usual Message to the Senate may be prepared.

The signed comment of Fillmore of the same date (in red ink and in his own hand) is appended to the foregoing letter in these words:

I have read & herewith return the treaty with Mr. Mann's explanation. I believe our trade with that country is small; consisting mostly in watches & silks

[1] Despatch of November 30, 1850, printed above.

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from them, and a few exports from us. But there is some emigration from that country to this; and it seems to me that a treaty stipulation that they may become landholders, and inherit, regardless of *residence* or citizenship ship is rather unusal, and may be deemed an infringement upon the rights of the states, which usually regulate the mode of transfer and tenure of real estate within their respective borders. (See clauses in article 1st & 5th marked with pencil)

Articles 10 & 11th appear very liberal. Perhaps no inconvenience would arise from them but I should like a consultation before sending in the treaty for ratification.

The clauses "marked with pencil" by Fillmore still show the marks (in the second original, between the columns of the English and French versions); they are those mentioning "real estate".

Two weeks later Webster resumed the discussion with this letter of January 21, 1851:

I call your attention again to the Convention negotiated at Berne, by Mr Mann, on the 25th November, last.

With respect to the 1st article you will observe, if I am right in its construction, that a Swiss citizen, in order to inherit land in the United States, must first become a citizen of the United States.

This 1st article is essentially the same as the 1st article in the Convention now subsisting between the United States and the Swiss Confederation, concluded in May 1847 [Document 127], and it seems, also, to be similar to the 12th article of the Treaty between the United States and the Republic of New Granada, concluded at Bogota, the 12th December, 1846 [1] [Document 125].

I observe you make a marginal pencil mark opposite one of the clauses [2] of the 12th article. — I take it, the flag there spoken of, is the flag of the United States. The context and the Grammar require this.

The provision of the 11th article, I think, is new; but it did not strike me, that any practical evil would be likely to result from it.

I shall be at any time ready to confer with you on the subject of this Convention, & with the other heads of Dept, if you should think proper. — It is desirable to avoid recommending any amendments to the Senate unless there be some clear necessity for such course: & as the Session is fast running out, it may be well to send in the Treaty soon.

I send you a copy of the existing Convention with the Swiss Confederation, & also the Treaty between the United States and New Granada, mentioned above.

To accept the reasoning of Webster in the second and third paragraphs of his letter of January 21, 1851, is not possible; he referred to three texts, namely, Article 12 of the treaty with New Granada of December 12, 1846 (Document 125), Article 1 (not mentioning Article 2) of the convention with Switzerland of May 18, 1847 (Document 127), and Article 1 (not mentioning Article 5) of the present convention as signed on November 25, 1850; the second and third of those three texts he deemed to be "essentially the same"; but clearly they are not; Article 2, not Article 1, of the convention with Switzerland of 1847, deals with real estate; Webster gave to Article 1 of the present convention as signed a very narrow construction; whether that view be thought correct or not, there can be no doubt whatever that the convention of 1850 as signed (reading Articles 1 and 5 together) was designed to give and did give more extensive

[1] In the margin opposite this paragraph there is written in red ink in the hand of Fillmore: "In the Swiss treaty it is confined to personal property. in that with N. Granada it extends to real & personal".

[2] The third paragraph of Article 12.

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rights to Swiss citizens in respect of real property than did the convention with Switzerland of 1847; the real-estate clauses of the convention of 1850 as signed were, as Webster intimated, similar in effect to Article 12 of the treaty with New Granada of 1846; they were supportable on that basis; but they could not rightly be defended on the erroneous basis of a supposed likeness to the Swiss convention of 1847. The marginal comment of Fillmore was apt.

Presumably the correspondence was followed by conference; Fillmore's views of the real-estate clauses of the convention were maintained; and they were elaborated in the presidential message to the Senate of February 13, 1851 (quoted below). In that message to the Senate strong and "decisive objection" was also made to the final paragraph of Article 1 of the convention as signed; it is a somewhat curious circumstance that no allusion thereto appears in the correspondence which has been quoted.

The First Senate Amendments

The amendments contemplated by the Senate resolution of March 7, 1851 (Executive Journal, VIII, 316; the resolution as there printed omits mention of Article 5; the attested resolution is in the treaty file), were to strike out the second, third, and sixth paragraphs of Article 1 and also the words "Accordingly" and "and real" in the fourth paragraph of the same article, and to strike out "and real estate" in Article 5 and "(whether personal or real)" in Article 6. Aside from paragraphs wholly stricken, corresponding changes in the French version would have required the omission in the fourth paragraph of Article 1 of "En conséquence et", of "et immobilières" both in the paragraph last mentioned and in Article 5, and of "(mobilière ou immobilière)" in Article 6.

The amendments of the Senate had thus two purposes: one was to expunge from the text the exception written into the convention to cover the religious disqualification then existing in certain Cantons of Switzerland (final paragraph of Article 1); the other was to limit to personalty the provisions of the convention regarding the holding of property and the succession thereto. Such changes had been suggested in the presidential message of February 13, 1851, submitting the convention to the Senate, as follows (*ibid.*, 289–90; the accompanying papers were two, the instruction to Mann of June 15, 1850, and his despatch No. 7, of November 30, 1850, each of which is cited and quoted above):

> I herewith communicate to the Senate, for its consideration, a general convention between the United States and the Swiss Confederation, concluded and signed at Berne, on the 25th day of November last, by Mr. A. Dudley Mann, on the part of the United States, and by Messrs. Druey and Frey-Herossee, on the part of the Swiss Confederation. I communicate at the same time a copy of the instructions under which Mr. Mann acted, and his dispatch of the 30th November last, explanatory of the articles of the convention.
>
> In submitting this convention to the consideration of the Senate I feel it my duty to invite its special attention to the 1st and 5th articles. These articles appear to contain provisions quite objectionable, if, indeed, they can be considered as properly embraced in the treaty-making power.

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The second clause of the 1st article is in these words:

"In the United States of America citizens of Switzerland shall be received and treated in each State upon the same footing and upon the same conditions as citizens of the United States born in or belonging to other States of the Union."

It is well known that according to the Constitution of the United States a citizen of one State may hold lands in any other State; and States have, sometimes by general, sometimes by special laws, removed the disabilities attaching to foreigners not naturalized in regard to the holding of land. But this is not supposed to be a power properly to be exercised by the President and Senate in concluding and ratifying a treaty with a foreign state. The authority naturally belongs to the State within whose limits the land may lie. The naturalization of foreigners is provided for by the laws of the United States, in pursuance of the provision of the Constitution. But when, under the operation of these laws, foreigners become citizens of the United States, all would seem to be done which it is in the power of this Government to do to enable foreigners to hold land. The clause referred to, therefore, appears to me inadmissible.

The fourth clause of the same article provides, among other things, that citizens of Switzerland may, within the United States, acquire, possess, and alienate personal and real estate, and the fifth article grants them the power of disposing of their real estate, which, perhaps, would be no otherwise objectionable, if it stood by itself, than as it would seem to imply a power to hold that of which they are permitted to dispose.

These objections, perhaps, may be removed by striking out the 2d clause of the first article and the words "and real" in the fourth clause. An amendment similar to the last here suggested was made by the Senate in the convention between the United States and the King of Bavaria, the ratification of which, as amended, the Senate advised and consented to on the 15th day of March, 1845.

But there is another and decisive objection, arising from the last clause in the first article. That clause is in these words:

"On account of the tenor of the federal constitution of Switzerland, Christians alone are entitled to the enjoyment of the privileges guaranteed by the present article in the Swiss cantons. But said cantons are not prohibited from extending the same privileges to citizens of the United States of other religious persuasions."

It appears from this that Christians alone are, in some of the Swiss cantons, entitled to the enjoyment of privileges guaranteed by the first article, although the cantons themselves are not prohibited from extending the same privileges to citizens of the United States of other religious persuasions.

It is quite certain that neither by law, nor by treaty, nor by any other official proceeding is it competent for the Government of the United States to establish any distinction between its citizens founded on differences in religious beliefs. Any benefit or privilege conferred by law or treaty on one must be common to all, and we are not at liberty, on a question of such vital interest and plain constitutional duty, to consider whether the particular case is one in which substantial inconvenience or injustice might ensue. It is enough that an inequality would be sanctioned hostile to the institutions of the United States and inconsistent with the Constitution and the laws.

Nor can the Government of the United States rely on the individual cantons of Switzerland for extending the same privileges to other citizens of the United States as this article extends to Christians. It is indispensable not only that every privilege granted to any of the citizens of the United States should be granted to all, but also that the grant of such privilege should stand upon the same stipulation and assurance by the whole Swiss Confederation as those of other articles of the convention.

There have been instances, especially some of recent occurrence, in which the Executive has transmitted treaties to the Senate with suggestions of amendment, and I have therefore thought it not improper to send the present convention to the Senate, inviting its attention to such amendments as appeared to me to be important, though I have entertained considerable doubt whether it would not be better to send back the convention for correction in the objectionable particulars before laying it before the Senate for ratification.

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Ratification of the convention thus amended followed, on the part of the United States, on March 12, 1851; in the treaty file are both the original and the duplicate of the United States instrument of ratification of that date.

The original ratification, signed by President Fillmore and countersigned by Secretary of State Webster, embodies a fair copy of the text of the convention in which the Senate amendments are incorporated; the clauses of ratification state that the "Convention, as amended by the Senate of the United States, and being in the English and French languages, is word for word as follows"; the instrument is thus in a form which, taken by itself, does not show what those Senate amendments were. No cord or ribbon now binds the pages, and no seal is affixed; but it is apparent that the document was originally prepared for binding within the then usual blue-velvet covers of an instrument of ratification intended for exchange. It is to be presumed that the covers and the then customary pendant seal enclosed in a silver box were a part of the instrument when it was sent to Bern (as stated below), and that they were subsequently removed, perhaps to be used on the original ratification of November 6, 1855.

The duplicate instrument of ratification of March 12, 1851, is in customary form. It is signed by President Fillmore, countersigned by Secretary of State Webster, and sealed with the wafer seal; it refers to the signed original of the convention as "hereunto annexed"; and it recites the Senate amendments at length, with the usual words of ratification of the convention "as amended by the Senate of the United States"; but no original convention is now with that ratification.

The Swiss Proposals

As signed, the convention provided (Article 19) for the exchange of ratifications at Bern; the United States instrument of ratification was accordingly transmitted by Henry Sargent, as bearer of despatches (D.S., 1 Special Missions, 339–41, September 24 and 25, 1851), and was delivered at Bern to Ambrose Dudley Mann, Special Agent of the United States, on November 14, 1851 (D.S., 14 Special Agents, No. 12, November 23, 1851). Mann negotiated regarding the amendments, although strictly he then had authority merely to exchange the ratifications; the Government of the Swiss Confederation was unwilling to accept the Senate amendments as they stood; Mann reported that the "subject of the amendments" was "not easy of arrangement solely on account of the Constitutional difficulty relative to the Israelites" (*ibid.*); there was delay which Mann attributed in part to the attitude of France toward Switzerland subsequent to the *coup d'état* of Louis Napoleon (December 2, 1850) and to the attitude of Prussia in respect of the Neuchâtel question (*ibid.*, No. 13, December 10, 1851, and No. 22, June 5, 1852); and in the despatch last cited he wrote:

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The four Autocratic powers [Austria, France, Prussia, and Russia], as you will have perhaps learned through other channels, perceive, or affect to perceive great danger to their security, in the first Article of the Treaty. Under its stipulations they assert that the enemies of Continental "order" will proceed to our country, become naturalized, return to Switzerland under the protection of the United States and prepare expeditions against adjacent States. Such representations have been made to the Federal Council and a dictatorial rather than a persuasive tone exercised to arrest the adoption of the article mentioned. Despots are terrified at the thought of our securing a foothold in the centre of Europe, even on the simple basis of reciprocal privileges to reside or trade; although Russia, Austria and Prussia have stipulations in force guaranteeing similar privileges to us! Another conference will probably be held next week; the result of which I will immediately communicate to you. If the Treaty shall be lost the circumstance will be a deplorable one to Switzerland. The moral cord will have been severed that was to have bound her to her natural ally. The Federal Assembly is to convene on the 1st Monday of next month [July 5, 1852]. It may be that the Federal Council will not act conclusively upon the "amendments" until it advises with that body.

Not until July 9, 1852, were the proposals of the Swiss Government formally delivered (*ibid.*, No. 25, July 15, 1852); these took the form of a revised text, in English and French, of Articles 1, 5, and 19 (with the testimonium and dating clauses unchanged); this revision was dated at Bern July 5, 1852, was signed on behalf of the Swiss Federal Council by the President and the Chancellor of the Confederation, sealed with the seal of the *Bundesrat* (Federal Council), and was headed (translation from the French): "Wording of the new redactions proposed by the Swiss Federal Council for Articles 1, 5, and 19 of the treaty concluded at Bern November 25, 1850, between the Plenipotentiaries of the United States of America and of the Swiss Confederation." The proposed text reads thus (original in the treaty file, appended to the covering note, which is quoted below):

ARTICLE I.

The citizens of the United States of America, and the citizens of Switzerland shall be admitted and treated upon a footing of reciprocal equality in the two countries, where such admission and treatment shall not conflict with the Constitutional or legal provisions, as well Federal as State and Cantonal, of the contracting parties; provided that the aforegoing stipulation shall be complied with and that they conform to the regulations and usages of the country wherein they reside, the citizens of the United States and the citizens of Switzerland, as well as the members of their families, shall be at liberty to come, go, sojourn temporarily, domiciliate or establish themselves permanently, the former in the Cantons of the Swiss Confederation, the Swiss in the States of the American Union; to acquire, possess and alienate therein property (as is explained in Article V); to manage their affairs, to

ARTICLE I.

Les citoyens des Etats-Unis d'Amérique et les citoyens de la Suisse seront admis et traités sur un pied d'égalité réciproque dans les deux pays, lorsque cette admission et ce traitement n'auront rien de contraire aux dispositions constitutionnelles ou légales, tant Fédérales que des Etats et des Cantons des parties contractantes; pourvu que la stipulation précédente soit remplie et qu'ils se conforment aux règlements et usages du pays où ils résideront, les citoyens des Etats-Unis et les citoyens de la Suisse, ainsi que les membres de leurs familles, pourront aller, venir, séjourner temporairement, prendre un domicile fixe ou s'établir d'une manière permanente, les premiers dans les Cantons de la Confédération Suisse, les Suisses dans les Etats de l'Union américaine; y acquérir, posséder et aliéner des propriétés (ainsi qu'il est expliqué à l'art. V); y gérer leurs affaires, y exercer leur profession, leur industrie et

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exercise their profession, their industry and their commerce, to have establishments, to possess ware-houses, to consign their products and their merchandise, and to sell them by wholesale or retail, either by themselves, or by such brokers or other agents as they may think proper; they shall have free access to the Tribunals and shall be at liberty to prosecute and defend their rights, before Justice, in the same manner as native citizens, by themselves or by such advocates, attorneys, or other agents as they may think proper to select. No pecuniary or other more burdensome condition shall be imposed upon their residence or establishment or upon the enjoyment of the above mentioned rights than shall be imposed upon citizens of the country where they reside, nor any condition whatever to which the latter shall not be subject.

The aforegoing privileges, however shall not extend to the exercise of political rights nor to a participation in the property of communities, corporations or institutions of which the citizens of one party established in the other shall not have become members or co-proprietors.

ARTICLE V

The citizens of each one of the contracting parties shall have power to dispose of their personal property, within the jurisdiction of the other, by sale, testament, donation or in any other manner, and their heirs, whether by testament or *ab intestato*, or their successors, being citizens of the other party, shall succeed to the said property or inherit it, and they may take possession thereof either by themselves or by others acting for them; they may dispose of the same as they may think proper, paying no other charges than those to which the inhabitants of the country, wherein the said property is situated shall be liable to pay in a similar case. In the absence of such heir, heirs, or other successors, the same care shall be taken by the authorities for the preservation of the property, that would be taken for the preservation of the property of a native of the same country, until the lawful proprietor shall have had time to take measures for possessing himself of the same.

The aforegoing provisions shall be applicable to real estate, situated

leur commerce, y avoir des établissements, y tenir des magasins, y consigner leurs produits et leurs marchandises, les vendre en gros ou en détail, tant par eux-mêmes que par tels courtiers ou autres agents qu'ils jugeront convenable; ils auront libre accès devant les Tribunaux et pourront faire valoir leurs droits en Justice, à l'instar des nationaux, soit par eux-mêmes, soit par tels avocats, avoués ou autres agents qu'ils jugeront convenable de choisir. On ne pourra leur imposer pour la résidence ou l'établissement ou pour l'exercice des droits mentionnés plus haut, aucune condition pécuniaire ou autre plus onéreuse qu'aux citoyens du pays dans lequel ils résident, ni aucune condition à laquelle ceux-ci ne seraient pas tenus.

Ne sont cependant pas compris dans les avantages mentionnés ci-dessus, l'exercice des droits politiques et la participation aux biens des communes, des corporations ou des fondations dans lesquelles les citoyens de l'un des pays établis dans l'autre, n'auraient pas été reçus membres ou à titre de co-propriétaires.

ARTICLE V.

Les citoyens de chacune des parties contractantes pourront librement disposer de leurs biens personnels, sis dans la juridiction de l'autre, soit par vente, testament, donation ou de toute autre manière, et leurs héritiers testamentaires ou *ab intestat*, ou leurs successeurs quelconques, citoyens de l'autre partie, acquerront ces dits biens ou en hériteront, et ils pourront en prendre possession eux-mêmes ou par fondés de pouvoirs; ils pourront en disposer comme ils l'entendront, n'ayant à payer d'autres droits que ceux auxquels sont soumis en pareil cas les habitants mêmes du pays dans lequel ces biens sont situés. En l'absence de l'héritier, ou des héritiers ou des autres successeurs, l'autorité prendra, pour la conservation des dits biens, les mêmes soins que s'il s'agissait de la conservation des biens d'un natif du même pays, et cela jusqu'à ce que le propriétaire légal des biens ait pu prendre les mesures convenables pour les recueillir.

Les disposition ci-dessus s'appliqueront en plein aux propriétés immo-

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within the States of the American Union or in the Cantons of the Swiss Confederation in which foreigners shall be entitled to retain the actual possession of such real estate.

But, in case real estate situated within the territories of one of the contracting parties should fall to a citizen of the other party, who, on account of his being an alien, could not be permitted to retain the actual possession of such property, in the State or in the Canton in which it may be situated, there shall be accorded to the said heir or other successor a term of not less than three years to sell such property; he shall be at liberty at all times to withdraw and export the proceeds thereof without difficulty and without paying to the government any other charges than those which, in a similar case, would be paid by an inhabitant of the country in which the real estate may be situated.

bilières sises dans les Etats de l'Union américaine ou dans les Cantons de la Confédération Suisse dans lesquels les étrangers sont admis à la possession en nature de propriétés foncières.

Mais si des propriétés immobilières sises sur le territoire de l'une des parties contractantes venaient à échoir à un citoyen de l'autre partie, qui, à cause de sa qualité d'étranger, ne serait pas admis à la possession en nature de ces propriétés, dans l'Etat ou dans le Canton dans lequel elles sont situées, il serait accordé à cet héritier ou successeur quelconque un terme de pas moins de trois ans pour vendre ces propriétés; il pourra toujours en retirer et exporter le produit sans difficulté et sans payer au Gouvernement aucun autre droit que celui qui, dans un cas analogue, serait dû par un habitant du pays dans lequel les propriétés foncières sont situées.

ARTICLE XIX

This Convention shall be submitted, on both sides, to the approval and ratification of the respective competent authorities of each of the contracting parties; and the ratifications shall be exchanged, at the City of *Washington*, as soon as circumstances shall admit.

ARTICLE XIX.

Cette convention sera soumise, de part et d'autre, à l'approbation et à la ratification des autorités compétentes respectives de chacune des parties contractantes; et les ratifications en seront échangées à *Washington*, aussitôt que les circonstances le permettront.

The deletion of the discriminatory religious clause of Article 1 as signed (paragraph 6) was thus accepted in the new Swiss proposal, but there was joined to the opening sentence for "reciprocal equality" of treatment a mutually operative reservation of constitutional and legal provisions; the effect of the other Senate amendments was to omit from the convention all reference to real property; but the Swiss proposal, while taking into account the laws of the several States, added clauses to Article 5 which treated of realty and which were adapted from Article 2 of the convention of May 18, 1847 (Document 127), then in force; the redraft of Article 19, which Mann requested (see his despatch of July 15, 1852, cited above), designated Washington as the place for the exchange of ratifications and made the time allowed therefor indefinite instead of fixed.

Some changes were later made in Articles 1 and 5 of this new text, as will be seen; but, subject thereto, it became definitive.

The revised text of July 5, 1852, was sent to Mann with a somewhat lengthy covering note of the same date, supporting the Swiss proposals (the original in French is in the treaty file; the covering note, with the appended revision, was an enclosure to Mann's despatch of July 15, 1852, cited previously); that note follows, in translation (not the rendering of 1853, which is poor):

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Mr. Special Agent: When the Swiss Federal Council had examined the General Treaty of Friendship, Reciprocal Establishments, Commerce, and Extradition of Criminals between the United States of America and the Swiss Confederation concluded at Bern on November 25, 1850, as modified and ratified on March 12, 1851, by the President of the United States following the deliberation of the Senate, which treaty you delivered to the President of the Swiss Confederation on November 15, 1851, requesting the exchange of ratifications by virtue of the full powers which the President of the United States gave to you under date of the preceding July 14, the Federal Council had the honor to reply to you on December 12 of the same year that, while seeing with great satisfaction that the two Governments had come to an accord on most of the articles which had been agreed upon between their Plenipotentiaries and ratified by the Swiss Federal Assembly, an agreement which cannot but maintain and draw closer and closer the bonds of friendship so happily existing between the American Union and the Swiss Confederation, the modifications made by the Government of the United States in two articles of the convention (Articles 1 and 5) are such that, before being able to come to a definitive determination on the matter in question, the Federal Council must communicate to you certain observations and proposals which the Cabinet of Washington will certainly not fail to take into favorable consideration, as they fall within the scope of the common intentions of the contracting parties. The Federal Council also stated to you that it had furnished with full powers for proceeding to the subsequent negotiations the two members of that body who had represented it in the original conclusion of the treaty, that is to say, Monsieur Druey, then President of the Swiss Confederation, now Director of Justice and of Police, and Monsieur Frei-Herosée, Director of Commerce and Tolls.

Various circumstances which are known to you have prevented the Federal Council from sooner making to you the communications just mentioned.

Following the conferences which our colleagues have had with you on different occasions and on the report which they have submitted to us, we are now in a position to communicate to you the observations and the proposals which we mentioned to you on December 12 last, and this the Federal Council hastens to do, as follows:

The modifications made by the Senate of the United States on March 7, 1851, in the treaty approved by the Swiss Federal Assembly on December 18, 1850, relate to Articles 1 and 5, all the other articles of the convention having been approved by both parties without any change. [The Senate amendment to Article 6 of the convention is not noticed.]

Article 1

The changes made by the Government of the United States in Article 1 of the text agreed upon and signed on November 25, 1850, by the Plenipotentiaries of the contracting parties, consist in the deletion:

1. Of the second and third paragraphs, particularizing and specifying for the *States* and *Cantons* the principle of reciprocal equality for the citizens of the two Federal Republics in the two countries, stated and set forth in a general manner within certain limits and subject to certain qualifications in the first paragraph of the article.
2. Of the words "and real" (estate) in the fourth paragraph, so as to bring the language into harmony with the changes made in Article 5 of the treaty.
3. Of the sixth and last paragraph, concerning citizens of the United States professing religious beliefs other than the Christian.

The first of these deletions, that of the second and third paragraphs of Article 1, has probably for its purpose the reservation of certain exceptions made in respect of foreigners or those not citizens of the States of the Union by the differing constitutions and laws of those States, or perhaps only the prevention of certain misunderstandings.

It is to be presumed that in deleting from Article 1 the sixth and final paragraph as agreed upon on November 25, 1850, the President and the Senate of the United States desire to avoid the appearance of being willing to sanction in a treaty provisions contrary to the Constitution of the Union of North America.

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Another decisive reason for the deletion in question is doubtless absence of reciprocity in the said sixth paragraph.

However this may be, it is evident that the difference in the terms by which Article 1 of the convention of November 25, 1850, was ratified on the one side by the Swiss Federal Assembly on December 18, 1850, and on the other by the President of the United States of America on March 12, 1851, in conformity with the amendments made by the Senate on the 7th of the same month, may cause uncertainty regarding the sense and the meaning of the texts and thus lead to misunderstandings, even to controversies in the application of the treaty which it is very important to avoid for the faithful execution of all its articles and for the good understanding of the parties.

On the other hand, the Swiss Federal Government has both the desire and the obligation to the same extent as that of the United States of America to avoid even the appearance of sanctioning in an international convention provisions which might be contrary to the principles embodied in the Federal Constitution of Switzerland and also in the constitutions of the Cantons, which are guaranteed by the Confederation. Reservations equally essential relating on one side and on the other to the fundamental laws of the contracting parties are indeed necessarily to be stipulated in favor of the one as well as in favor of the other, although the constitutional and legal provisions thus reserved do not in all cases involve the same questions or the same purposes in the two countries.

In view of these considerations it seems to us indispensable to substitute for Article 1 as written in the convention signed at Bern on November 25, 1850, an article so drafted that, while deleting therefrom the second, third, and sixth paragraphs, and while leaving intact the part thereof which was not modified by the Government of the United States, the parties substitute for the paragraphs deleted a clause which reserves the constitutional and legal provisions, Federal, State, and Cantonal, of the contracting parties, a clause which will have for each one the effect which is desired.

You will find at the end of the present communication the new redaction of Article 1, and you will doubtless be convinced, Mr. Special Agent, that this draft, in English and in French, is in all points conformable to that which, after various conversations with our delegates, you envisaged as expressing more exactly than any other draft proposed by them the presumed intentions of the Federal Government of the United States. You will observe, moreover, that the Federal Council has not, in respect of the admission and the treatment of American citizens in Switzerland and of Swiss citizens in the United States, merely reserved *constitutional* provisions, Federal, State, or Cantonal, of the contracting parties, but that it has also reserved *legal* provisions of each party in order to respond the more completely to the desire which you expressed in observing that a similar reservation [1] exists in the treaty concluded in 1800 between the French Republic and the United States of America.

It was all the more necessary to agree upon a draft which would leave existing an article regarding reciprocal establishments of the citizens of the two Confederations, an article which is the crown of the treaty and which constitutes therein, with those regarding the extradition of criminals, the political and moral portion thereof, so that if it were necessary to abandon Article 1, Articles 2, 3, and 4, which are the corollaries of that article, would necessarily follow; the deletion of those articles would largely impair an alliance destined to strengthen more and more the friendship which binds the peoples of the two Federal Republics.

ARTICLE 5

There is also the need of drafting Article 5 anew. Indeed, you are aware that as originally signed by the Plenipotentiaries on November 25, 1850, Article 5, extending the provisions of the present convention [Document 127], concluded in 1847 and ratified in 1848, assimilated, in respect of possession, *real* property and personal or *movable* property and did away with the difference established by the said convention according to which citizens of the two parties might possess movable property and dispose thereof freely in all the States and in all the

[1] See Article 7 of Document 25, the convention with France of September 30, 1800.

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Cantons of the two Confederations while, as foreigners were not permitted to possess fixed property in certain of the States of the American Union, Swiss citizens were given a period of three years to sell real property which might fall to them. But the Federal Government at Washington, fearing lest the States where such restrictions still exist would be opposed to this innovation as an impairment of their sovereignty, deleted in Article 5 as in Article 1 the words *and real* (property), constituting the assimilation of such property with personal or movable property. However, the deletion of those two words has a consequence which goes beyond the intention of the parties, since not only would real property cease to be assimilated to personal property but the provision of the present convention granting a period of three years to sell realty which might fall to the citizens of one of the countries within the territory of the other would disappear or at least would be in danger of becoming doubtful.

Since the evident intention of the Government of the United States in deleting the words in question was to continue in that regard the convention now existing, the easiest way to avoid any misunderstanding and to include everything in one and the same treaty is to substitute for Article 5 as it stands in the convention signed at Bern on November 25, 1850, a new Article 5 drafted on the basis of the convention of 1847–48, making some slight modifications therein which, without changing the substance of the former provisions, would render them more complete and more clear.

Such is the aim of the new Article 5 which is written below, an article which you have welcomed as expressing the intentions of the competent treaty-making power of the United States of America.

Although we would have greatly desired that the term of three years for selling realty which might fall to Swiss citizens in the States of the Union where foreigners are not permitted to possess realty might be extended to six years at the least, we have been constrained to yield to the observation that such a change would be contrary to the constitutions or laws of those States.

And if we do not insist upon the insertion of a clause expressly authorizing the respective consuls to demand the administration of the property fallen to their absent nationals, this is on the one hand because you, Mr. Special Agent, have stated to our delegates that such a provision does not exist in any treaty of the United States of America with other nations, not even with England, and on the other hand because the clause of Article 7 of the treaty which is the subject of this communication, providing that "the consuls and vice consuls appointed by the contracting parties shall enjoy the same privileges and powers, in the discharge of their duties, as those of the most favored nations", will necessarily have the effect of giving to the said consuls and vice consuls the right to demand the administration of property fallen to their absent nationals in the States and in the Cantons where the consuls of other nations would in fact, by virtue of the laws and customs or practice in those States or Cantons, be permitted to have the advantage in question.

The Federal Council would equally have desired other additions to the treaty or the redrafting of certain articles, among others, Article 12, in a manner more explicit and one which would be better applicable to the situation and to the interests of Switzerland, which has no shipping; but aside from the explanations which you have given to our delegates—especially the explanation that by virtue of a proclamation [1] made some years ago merchandise carried to the United States of America in vessels of any nation whatever coming directly from one port of that nation without touching other territories is treated upon entry as merchandise arriving under the flag of the United States of America, provided, however, that that nation extends reciprocity in that regard toward the United States—the Federal Council has been led by a peremptory consideration to abandon every proposal concerning the articles of the treaty aside from Articles 1 and 5, modified at Washington, namely, this: that the articles ratified on both parts by the President and the Senate of the United States as well as by the Federal Assembly have virtually acquired the status of a convention which binds them morally, and that every other consideration ought to yield to the respect for the accomplished fact, for the word reciprocally given and accepted by two friendly nations.

[1] The reference is doubtless to the act of May 24, 1828, 4 Statutes at Large, 308–9; see vol. 3, p. 707.

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ARTICLE 19

What has just been said is naturally not applicable to the necessity which now appears for stating in Article 19 the place and the period for the exchange of ratifications in conformity with the lapse of time. Article 19, remaining otherwise the same, is therefore written below in the two languages as it will be suitable for insertion in the new text (*expédition*) of the treaty.

It has indeed been agreed between you, Mr. Special Agent, and our delegates that if the competent treaty-making power of the United States shall assent to the new redaction of Articles 1 and 5 of the treaty, such new redaction will be submitted to the Swiss Federal Assembly, which we have every reason to hope will accept the same also on its part; that when these ratifications have taken place the contracting parties will draw up new texts (*expéditions*) of the treaty throughout, that is to say, in nineteen articles concluded and signed at Bern by their Plenipotentiaries on November 25, 1850, in which new texts Articles 1, 5, and 19 as they are drafted below will be transcribed in lieu and stead of those which were originally inserted; and that these new texts will be the subject of the exchange of ratifications; the former originals (*expéditions*) of the treaty, being thus replaced, will be null and void on the two parts.

The Federal Council gives its full approval to this mode of procedure, for if it had been foreseen that Articles 1 and 5 would be modified at Washington, the Plenipotentiaries of the contracting parties would have heretofore drafted and signed them on November 25, 1850, as they are now proposed.

Accordingly, we return to you the instrument[1] of the treaty as it was amended at Washington on March 7 and 12, 1851, which you delivered to the President of the Swiss Confederation on November 15, 1851, and for which will be substituted another instrument.[1] And, according to the desire which you have expressed, we also enclose the full powers which you received from the President of the United States under date of July 14, 1851, for the exchange of ratifications.

In forwarding this communication to the Federal Government at Washington, we beg that you will be good enough to add all explanations necessary for its information and to assure your Government of the sympathies of Switzerland for the United States of America.

We gladly take this opportunity, Mr. Special Agent, to beg you to accept the renewed assurance of our high consideration.

In the name of the Swiss Federal Council,

The President of the Confederation:
DR FURRER

The Chancellor of the Confederation:
SCHIESS

BERN, *July 5, 1852.*

To Mr. A. DUDLEY MANN,
Special Agent of the United States of America near the Swiss Confederation, Bern.

RESUBMISSION TO THE SENATE

The next step taken was the resubmission of the convention to the Senate by President Fillmore with his message of February 3, 1853, as follows (Executive Journal, IX, 25):

I transmit herewith to the Senate, in a new draft, the convention with the Swiss Confederation, originally negotiated at Berne, and concluded in that city on the 25th of November, 1850. On the 7th of March, 1851, it was considered by the Senate of the United States, whose assent was given to it with certain amendments, as will appear from the Journal of the Senate of that date. The convention was sent back to Switzerland with these alterations, which were taken into consideration by the Government of that Confederation, whose action in the premises will be learned by a letter from its President of the 5th of July, 1852.

[1] The French is *expédition*, meaning here "instrument of ratification".

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The modifications which the Government of the Swiss Confederation are desirous of introducing into the amendments made by the Senate of the United States and the articles affected by them are not inconsistent with the object and spirit of those amendments, and appear to me to proceed upon a reasonable principle of compromise.

I have thought it expedient, in submitting them to the Senate, with a view to their advice and consent to the ratification of the treaty in its present form, to have the entire instrument taken into a continuous draft, as well the portions—by far the greater part—already assented to by the Senate, as the modifications proposed by the Government of the Swiss Confederation in reference to these amendments. In preparing the new draft a few slight alterations have been made in the modifications proposed by the Swiss Government.

Should the convention receive the approbation of the Senate in its present form, it will be immediately transmitted to Switzerland for ratification by the Swiss Confederation.

The delays which have taken place in the negotiation of this treaty have been principally caused by the want of a resident diplomatic agent of the United States at Berne, and are among the reasons for which an appropriation for a chargé d'affaires to that Government has recently by my direction been recommended in a letter from the Department of State to the chairman of the Committee on Foreign Relations of the Senate.[1]

Perhaps because of the procedure suggested in the Swiss note of July 5, 1852, the somewhat unusual course was followed (as indicated in the foregoing message) of submitting the convention to the Senate in the form of a so-called "New Draft" of the entire text in the two languages.

The presidential message of February 3, 1853, with the accompanying papers, was twice printed as a Senate document (Executive Journal, IX, 26, 181), which includes, besides the New Draft (in both languages), the despatch of Mann of July 15, 1852 (cited previously), a translation, by no means flawless, of the Swiss note of July 5, 1852, and the Swiss redraft of Articles 1, 5, and 19, in English only, as well as the message and papers received in the Senate on February 14, 1851, with the text of the convention as signed and the Senate resolution of March 7, 1851 (Senate Confidential Document No. 7, 33d Congress, 1st session, Regular Confidential Documents, XXXIV, 127–66).

It is unnecessary to print the New Draft as such. For all articles excepting four (1, 5, 6, and 19) the text of the New Draft (subject to scrivening errors) is that of the convention both as it was signed and as it went into force; for three of those four articles (1, 6, and 19) the text of the New Draft was the final text; for Article 5 the text of the New Draft was the same as the final text except for a Senate amendment (of May 29, 1854) presently to be stated. As compared with the Swiss redaction of July 5, 1852, of three articles (1, 5, and 19), the New Draft differs only in Articles 1 and 5. In Article 1 the words "provided that the aforegoing stipulation shall be complied with and that they conform to the regulations and usages of the country wherein they reside" ("pourvu que la stipulation précedente soit

[1] See D.S., 6 Report Book, 479–82, letter of Secretary of State Everett to Thomas H. Bayly, Chairman of the Committee on Foreign Affairs of the House of Representatives, January 25, 1853.

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remplie et qu'ils se conforment aux règlements et usages du pays où ils résideront") are omitted from the New Draft; in lieu thereof, in the next sentence, are inserted the words "subject to the Constitutional and legal provisions aforesaid, and yielding obedience to the laws, regulations and usages of the country wherein they reside" ("pourvu qu'ils se conforment aux dispositions constitutionnelles et légales ci-dessus mentionnées et qu'ils obéissent aux lois, règlemens et usages du pays où ils résideront"); for the words "before Justice" are substituted "before courts of Justice", but the corresponding French is unchanged; and "aforegoing" is changed by erasure to "foregoing". In Article 5, second paragraph, "aforegoing" is again changed to "foregoing"; for "in" is substituted "within"; and for the words "retain the actual possession of such" are substituted "hold or inherit" (the corresponding change in the French being the insertion of "ou à l'heritage"). In the third paragraph of the same article, for "retain the actual possession of" is substituted "hold", the corresponding French remaining unchanged. Article 6, which is not mentioned in the Swiss proposals, remained in the New Draft as amended by the Senate resolution of March 7, 1851.

One other change, a very trifling one, was incorporated in the New Draft; in the English version of the preamble, for the words of the opening phrase, "tighten, more and more", as written in the signed original, were substituted "draw more closely".

In the Senate final action on the New Draft was postponed for more than a year. There was opposition to the last paragraph of Article 5 (see Executive Journal, IX, 321); and by the resolution of advice and consent of May 29, 1854, that paragraph was amended (*ibid.*, 330–31) by striking out the words "a term of not less than three years" ("un terme de pas moins de trois ans") and inserting in lieu thereof "such term as the laws of the State or Canton will permit" (which became, in the French, "tel terme que les lois de l'Etat ou du Canton le permettent"). The attested Senate resolution is in the treaty file.

Further Proceedings

It thereupon became necessary to communicate to the Swiss Government the changes in the text now proposed, and particularly the Senate amendment; to this end instructions of June 8, 1854, were sent by Secretary of State Marcy to Theodore S. Fay, Minister Resident at Bern, reading in part as follows (D.S., 1 Instructions, Switzerland, 15–17):

> A copy of the Convention, thus amended, I now transmit to you for the ratification of the Swiss government. You will accordingly deliver it as soon as it is placed in your hands, to the Minister of Foreign Affairs of Switzerland. If the amendment shall be accepted by the treaty-making power of that Republic, you will perceive that a ratified copy is to be sent to Washington for exchange. When this occurs, the treaty will be duly proclaimed by the President.
>
> It is presumable that the amendment will create no obstacle to the final ratification of the Convention by Switzerland when it is understood that there are now but few States of the Union in which aliens are not permitted to hold real estate and when the President has employed, at the request of the Senate, his

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good offices to secure this privilege in all, as is explained in the accompanying letter addressed to the Executive of each.

Most of our treaties, including the existing one with Switzerland respecting the *droit d'aubaine*, contain the stipulation, word for word, which has been amended in the present instance; but the government of the United States has not the power to carry the stipulation practically into effect in such States, the number having been reduced it is believed to three or four, as withhold their assent to such a procedure.

The preamble, &c., which accompanies the Convention is in the precise form in which it will be proclaimed by the President, and that of Switzerland should be identical in the copy which she sends here for exchange.

No reference was made in the foregoing instruction to the minor changes from the wording of the Swiss proposals which had been made in the New Draft; but the express mention of the preamble seems to be an allusion to the trifling modification of its English version mentioned above; whether a French version of the text formed part of the copy of the convention enclosed does not appear.

The "letter addressed to the Executive of each" State, a copy of which was enclosed with the instruction, was the circular letter of Secretary of State Marcy of October 19, 1853 (D.S., 42 Domestic Letters, 28–29); the occasion of that letter was the second paragraph of Article 7 of the Consular Convention with France of February 23, 1853 (the text of the letter is quoted in the notes to that convention), which reads as follows:

> As to the States of the Union by whose existing laws aliens are not permitted to hold real estate, the President engages to recommend to them the passage of such laws as may be necessary for the purpose of conferring this right.

That instruction of June 8, 1854, was in substance repeated to the Swiss Government in a note of Fay of the following June 26 (D.S., 1 Despatches, Switzerland, No. 64, June 27, 1854, enclosure). One statement in that note (and in the instruction) is particularly to be noticed; it is said in effect that in respect of the provision of Article 2 of the convention of May 18, 1847 (Document 127), granting to alien heirs a term of not less than three years for the disposal of real property acquired by them by devise or descent, the Government of the United States did not have "the power to carry the stipulation practically into effect in such States as withhold their assent". That statement (which the Swiss Federal Council put forward in its message of April 30, 1855, cited below) overlooked and ignored the fact that such a treaty stipulation was regarded by the courts as self-executing, as part of the supreme law of the land under the Constitution of the United States, and as controlling the title to realty in a proper case, even in a State where the common-law rule which barred aliens from the inheritance of lands prevailed (see the early cases listed in American Digest, Century ed., II, 153–60).

The Swiss Government very naturally desired to be informed regarding the practical effect of the Senate amendment and particularly requested the names of the States in which aliens were not then permitted to hold real estate and copies of the various State statutes (D.S., 1 Despatches, Switzerland, Nos. 64 and 65, June 27 and 30,

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1854, and enclosures). A statement of the relevant laws was furnished (D.S., 1 Instructions, Switzerland, 26, November 13, 1854) and was communicated to the Swiss Government on December 8 (D.S., 1 Despatches, Switzerland, No. 94, December 12, 1854); a somewhat imperfect translation of the statement was incorporated in the message of the Swiss Federal Council to the Federal Assembly of April 30, 1855 (D.S., 2 Despatches, Switzerland, No. 128, July 2, 1855, enclosure, the French version of the message); the text of the statement [1] follows (D.S., file 124.546/79, enclosure to despatch No. 3592 from Bern, October 27, 1934):

In the States of Alabama, Maine, Mississippi, North Carolina, Tennessee, Vermont, Rhode Island and South Carolina, the disability of aliens to hold lands has not been removed.

Arkansas. Aliens, if resident in the United States, after having declared their intention to become citizens, may take and hold real estate.

Connecticut. The same.

Delaware. The same.

Georgia. An alien may purchase and hold real estate, having declared his intention to become a citizen, and after having *become a citizen* may convey the same.

In Florida, California, Illinois, Louisiana, Michigan, New Jersey, Ohio, Pennsylvania, New Hampshire, Wisconsin and Virginia, aliens stand on the same ground as native citizens, as it regards their rights to hold and convey real estate.

Indiana. An alien who is a *bona fide* resident of the United States may take and hold land.

Iowa. Aliens residing in the State have all the rights of native born citizens in relation to holding and conveying lands.

Kentucky. Persons emigrating to Kentucky from any foreign nation, with intention to reside therein, may hold and convey real estate the same as if he were a native born citizen.

Maryland. An alien may purchase and hold land against every one until "office found", or until the Government shall exercise its authority over it.

Massachusetts. Aliens may take and hold land against all persons except the State.

New York. Aliens may take by purchase and maintain action for the land, which cannot be defeated by Defendant on the ground of the Plaintiff's alienage, but the State may interfere and divest the alien of his title.

Missouri. Aliens residing in the State may acquire and hold real estate either by descent or purchase.

Texas. Aliens may hold land provided they derive their title from the Government.

It was not until the meeting of the Federal Assembly which began on July 2, 1855, that the convention could again be considered by the Swiss legislative bodies, by whom it was duly accepted, though with some opposition, on July 18 and 21 (D.S., 2 Despatches, Switzerland, No. 136, August 6, 1855, and enclosure). There is this account by Fay of the debates (*ibid.*, No. 134, July 21, 1855):

In the National Council the report of the Committee was read by Mr. de Gonzenbach of Berne. He stated that "the two Councils of the Confederation, "in 1850, had ratified a treaty which was greeted by banquets and speeches upon "the "Union of the two Republics". The United States Senate appeared much "less satisfied, and cancelled the clauses most favorable to Switzerland; particu-

[1] The subject is one of some complexity, as it involves the statutes and judicial decisions of thirty-one States; but certainly the correctness and completeness of this summary statement are at least questionable.

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"larly the guarantees accorded against the frequent arbitrary proceedings of the "separate States relative to real property inherited by aliens. Notwithstanding "these disadvantages introduced into the present treaty, it secured the Swiss a "position more favorable than that of other european States. A rejection, at "the present moment, might be followed by inconvenient consequences. He "therefore recommended a ratification. Although the unconditional rights of "aliens, to hold real property, did not exist in all the States, he considered there "were very important material and political advantages; particularly that se- "curing to the swiss the position of the subjects of the most favored nations. At "the same time, he invited the Federal Council to use its influence for the pre- "vention of any unfavorable modification of the american legislation with regard "to natives of Switzerland."

Mr. Revel of Berne opposed the treaty. He considered it would be "an unwar- "rantable step backward. The existing convention, of 1847, was valid till 1859. "It offered greater guarantees to the emigrant; and, before its expiration, the "Confederation would have time to conclude a more favorable one."

Mr. Frey-Herosée replied that "the first convention had contained clauses "equally contrary to the legislation of Switzerland and the United States.

"The American Senate demanded equal privileges for every american citizen; "whereas the swiss federal Constitution limited these privileges to persons of the "christian faith. This was to be weighed against the limitation as to the acquisi- "tion and possession of land in certain of the States."

Dr. Schneider, of Berne, called attention to the "high fees taken in Switzerland by the american Consuls", which weighed so heavily upon swiss commerce, and proposed that the Federal Council should ask their diminution.

The ratification was carried in connection with another resolution, elicited by fear of the Know-Nothings, viz: that the Federal Council be instructed to endeavor to procure the assurance that the States of the Union would introduce no new restrictive measures against swiss emigrants or aliens.

I attended the debate, and was informally applied to, by several members, for information, which I gave, upon various points connected with it. There is no stenographic report except the imperfect, unofficial newspaper correspondences which differ from each other. I have the honor to enclose that of the Bund Gazette. President Furrer informed me that, as soon as the official notice should be received from the assembly, the Federal Council would communicate with me. The debate, in the other Chambers, was also short. It was stated that "Swit- "zerland had obviously the greatest advantages from the treaty, because the "swiss emigrated in masses; while an american scarcely ever settled in Switzer- "land. America had been unable to remove all the restrictions upon aliens with "regard to the right of holding real estate; but she had, in the treaty itself, as "well as by the mouth of her President, given the solemn assurance that the "swiss should stand in the position of the subject of the most favored nation. "When it is borne in mind what a spirit now reigns in America against aliens; "what threats are uttered against the emigrant; this treaty must be considered "a fortunate event. It secures, at least, the free right of domicile, etc. etc. and "future criminals, even escaped beyond the Ocean, could be brought to justice."

President Furrer thought, as there is now a Minister of the U. States here, and no swiss Minister in Washington, it would be most convenient to exchange the ratifications in Berne; but as the Art XIX of the Convention, and the instructions contained in your despatch No. 12, leave no doubt on that point, I shall cause a ratified copy to be sent to the Department as soon as it can be prepared.

There was more opposition than I anticipated. Mr. Frey made to me the same remark; and Mr. Gonzenbach said "there was at one moment a certain doubt!" The party of despotism in Europe does not wish to see the United States and Switzerland on two friendly terms; and looks with displeasure and suspicion on the establishment of this Legation. I have been sometimes surprised at the tone of newspaper articles and senatorial speeches. The rejection of our treaty would have pleased many persons. I do not think these ideas are at all entertained by the mass of the swiss nation, any more than by the members of the federal government or assemblies; but there is a party always watching to overthrow the federal Constitution and bring back the old state of affairs. I the other day heard a grave discussion as to what use the splendid edifice, erected here for the Federal Assembly &c, could be put to, in case there should be a change of government.

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Ratification on the part of Switzerland followed on July 30, and on the part of the United States on November 6, 1855; two days later the ratifications were exchanged at Washington; and the proclamation issued on November 9, 1855.

The Instruments of Ratification

The Swiss instrument of ratification of July 30, 1855, one of the papers in the treaty file, reads as follows:

[Translation]

LE CONSEIL FEDERAL de la Confédération Suisse, après avoir vu et examiné le Traité d'Amitié, d'Etablissement, de Commerce et d'Extradition conclu à Berne, le 25 Novembre 1850 entre la Confédération Suisse et les Etats-Unis de l'Amérique du Nord sous réserve de ratification par les plénipotentiaires des deux Etats, Traité qui a été approuvé par le Conseil national le 16. Décembre 1850 et par le Conseil des Etats le 17 Décembre 1850 et dont la teneur suit:

THE FEDERAL COUNCIL of the Swiss Confederation, having seen and examined the Treaty of Amity, Establishment, Commerce, and Extradition concluded at Bern on November 25, 1850, between the Swiss Confederation and the United States of North America, subject to ratification, by the Plenipotentiaries of the two states, which was approved by the National Council on December 16, 1850, and by the Council of States on December 17, 1850, the wording of which follows:

[Here follows the text as signed, in French and English]

après avoir vu et examiné en outre les Articles I, V, VI, XIX dans la forme en laquelle ils ont été acceptés par le Sénat de l'Union de l'Amérique du Nord, articles auxquels ont adhéré le Conseil des Etats le 18 Juillet 1855 et le Conseil national le 21. Juillet 1855, et dont la teneur suit:

having seen and examined, moreover, Articles 1, 5, 6, and 19 in the form in which they were accepted by the Senate of the Union of North America, articles to which the Council of States assented on July 18, 1855, and the National Council on July 21, 1855, and the wording of which follows:

Here follows the amended text, in French and English, of Articles 1, 5, 6, and 19]

déclare que le Traité ci-dessus est ratifié et a force de loi dans toutes ses parties et en particulier les articles I, V, VI et XIX tels qu'ils ont été modifiés, promettant au nom de la Confédération Suisse de l'observer consciencieusement et en tout temps, pour autant que cela dépend d'elle.

En foi de quoi la présente ratification a été signée par le Président et le Chancelier de la Confédération et munie du sceau fédéral.

Ainsi fait à Berne, le trente Juillet Mil huit cent cinquante-cinq, (30 Juillet 1855.)

Au nom du Conseil fédéral,
Le Président de la Confédération:
[Seal] DR FURRER
Le Chancelier de la Confédération:
SCHIESS.

declares that the foregoing treaty is ratified and has the force of law in all its parts and in particular Articles 1, 5, 6, and 19 as modified, promising in the name of the Swiss Confederation to observe the same scrupulously and at all times insofar as observance depends upon the Confederation.

In faith whereof the present ratification has been signed by the President and the Chancellor of the Confederation and sealed with the Federal seal.

Thus done at Bern the thirtieth of July, one thousand eight hundred and fifty-five (July 30, 1855).

In the name of the Federal Council,
The President of the Confederation:
[Seal] DR FURRER
The Chancellor of the Confederation:
SCHIESS.

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The form of this instrument of ratification, under the Swiss Constitution of 1848, may be compared with that of the convention of May 18, 1847 (dated July 2, 1847, and printed in the notes to Document 127), which was under the Constitution of August 7, 1815 (*Bundesvertrag* or *Pacte fédéral*). The present instrument bears a great seal of the Confederation which, in respect of its date (MDCCCXLVIII), differs from that of the earlier period, but is otherwise similar.

In the text, aside from the amended articles (1, 5, 6, and 19), included in the Swiss instrument of ratification, four variances in wording from the text of the second signed original have been noticed, two in the English and two in the French: in Article 4 "Etats-Unis d'Amérique" in the original is "Etats-Unis" in the Swiss ratification; in Article 12, final paragraph, "have been" is "may have been"; in Article 18 "un avant" is "un an avant"; and in the testimonium clause "the above" is "above". No variance in wording between Articles 1, 5 (subject to the Senate amendment of May 29, 1854), 6, and 19 of the New Draft and the corresponding articles in the Swiss ratification has been noticed.

The United States instrument of ratification of March 12, 1851, which failed of exchange, is described above under the heading "The First Senate Amendments".

The duplicate United States instrument of ratification of November 6, 1855, which is bound with the New Draft and with the original proclamation, states that the "Convention, as subsequently amended by competent authorities of the respective governments, is hereto annexed".

A facsimile of the original United States instrument of ratification of November 6, 1855, obtained from the Swiss archives, is now in the treaty file; that instrument is in the following form:

Franklin Pierce, President of the United States of America,

To all to whom these presents shall come, Greeting:

Know Ye, that, whereas a General Convention of Friendship, Reciprocal Establishments, Commerce, and for the surrender of fugitive criminals, between the United States of America and the Swiss Confederation, was concluded and signed in the City of Berne, on the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty, by the Plenipotentiaries of the parties, which Convention, as subsequently amended by competent authorities of the respective governments, is word for word as follows:

[Here follows the text in both languages as in the New Draft]

And whereas the Senate of the United States by their Resolution of the 29th. May, 1854, (two thirds of the Senators present concurring) did advise and consent to the ratification of the said Convention with the following Amendment:

> Article 5. in the seventh line of the last clause thereof strike out the words:—"a term of not less than three years", and in lieu thereof insert:—*such term as the laws of the State or Canton will permit.*

Now, therefore, be it known, that I, Franklin Pierce, President of the United States of America, in pursuance of the aforesaid advice and consent of the Senate, do hereby ratify and confirm the said Convention as amended by the Senate of the United States, and every article and clause thereof.

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In testimony whereof, I have caused the Seal of the United States to be hereunto affixed.

Given under my hand at the City of Washington the sixth day of November in the year of our Lord one thousand eight hundred and fifty-five; and in the eightieth year of the Independence of the United States of America.

[Seal appendant] FRANKLIN PIERCE

By the President:
W. L. MARCY.
Secretary of State.

THE EXCHANGE OF RATIFICATIONS

By one of the modifications of the convention as signed, the place of exchange of ratifications had been changed from Bern to Washington (Article 19); at the time the Swiss Government had no diplomatic representative in the United States; the Swiss instrument of ratification was therefore sent to John Hitz, consul general of Switzerland at Washington, for the exchange, which took place on November 8, 1855. The certificate of exchange reads thus (original in the treaty file):

We, the Undersigned, William L. Marcy, Secretary of State of the United States, and John Hitz, Consul General of the Swiss Confederation, do hereby certify that the ratifications of the Convention concluded and signed in the City of Berne on the 25th of November, 1850, between the United States of America and the Swiss Confederation, as subsequently amended by competent authorities of the respective governments, have this day, with all suitable solemnities and after due comparison each with the other and both with the original New Draft of the said Convention, been exchanged by us. In making said comparison it was observed that, in the second sentence of the first paragraph of Article 7, in the English version of the Convention, after the word "Consul" the words "or Vice Consul" are omitted in the original new draft and in the ratification of the government of the United States.

In witness whereof, we have signed this certificate in duplicate and have sealed the same with our respective seals, in the City of Washington this eighth day of November, 1855.

W. L. MARCY. [Seal]

JOHN HITZ [Seal]

According to the foregoing certificate, the three texts compared were those of the respective instruments of ratification and that of "the original New Draft"; that "original" is doubtless the example which is now within the original proclamation, which is headed "New Draft of a Convention between the United States and the Swiss Confederation" and which is probably the paper sent to the Senate with the presidential message of February 3, 1853; the text is in both languages, the English on the left pages; the Senate amendment of May 29, 1854, to Article 5 is therein interlined in pencil above the stricken words, which are bracketed; and the noted omission of three words from the "original" New Draft (Article 7, English version) shows that the New Draft, for the entire convention aside from the four amended articles and the English of the preamble, was intended to be merely an accurate copy of the signed original.

In previous prints of this convention, both official and unofficial (e.g., 11 Statutes at Large, 587–95), the words "or Vice-Consul" in the English version of the first paragraph of Article 7 have consist-

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ently been bracketed; but as the scrivening omission of those words from the New Draft was duly noted upon the exchange of ratifications, they are strictly and properly running words of the English version of the agreement (and are here so printed therein following the headnote) aside from any question of the source text, hereafter discussed.

In a note to Secretary of State Marcy of November 2, 1855, the original full power of John Hitz, consul general of Switzerland at Washington, to exchange the ratifications was enclosed (D.S., 3 Notes from Foreign Consuls); that power from the Federal Council is under the seal thereof and is dated July 30, 1855; and perhaps the inaccuracy of Article 7 of the New Draft which the collating of texts brought to light delayed the exchange for a day, for the time fixed by the answering note of Marcy was "the hour of 2 o'clock, of Wednesday next the 7th. instant" (D.S., 1 Notes to Foreign Consuls, 49, November 5, 1855).

The Proclamation

It has been mentioned that the original proclamation of the convention includes the "original" New Draft referred to in the certificate of the exchange of ratifications; the original proclamation is one of the papers in the treaty file and is in the following form:

By the President of the United States of America:

A Proclamation.

Whereas, a General Convention of Friendship, Reciprocal Establishments, Commerce, and for the Surrender of Fugitive Criminals, between the United States of America and the Swiss Confederation was concluded and signed by their respective Plenipotentiaries in the City of Berne on the twenty-fifth day of November, eighteen hundred and fifty; which Convention as subsequently amended by competent authorities of the respective governments and being in the English and French languages is word for word as follows:

New Draft of a Convention between the United States and the Swiss Confederation.

[Here follows the New Draft, described above, in English and French]

And whereas, the said Convention has been duly ratified on both parts, and the respective ratifications of the same were exchanged in the City of Washington on the 8th instant, by William L. Marcy, Secretary of State of the United States, and John Hitz, Consul General of the Swiss Confederation, on the part of their respective governments:

Now, therefore, be it known that I, Franklin Pierce, President of the United States of America, have caused the said Convention to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the City of Washington, this ninth day of November in the [Seal] year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States of America the eightieth.

Franklin Pierce

By the President:
W. L. Marcy.
Secretary of State.

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The Source Texts

It is a rule of this edition that the source text of a treaty is (when available) a signed original thereof; and in the case of a treaty amended after signature, the rule is followed as far as may be practicable. The procedure adopted with regard to this convention raises the question whether, and, if so, how far, the rule should be followed in this case.

It will be convenient at this point to give a brief summary of that procedure, which has heretofore been set forth in detail.

When the treaty was first submitted to the Senate it was amended by striking out portions of three articles, 1, 5, and 6. The Swiss Government, on receiving those amendments, made counterproposals in the form of a redraft of Articles 1, 5, and 19, Article 6 not being mentioned; and in the Swiss note of July 5, 1852 (quoted above), covering the redraft, an understanding reached between that Government and the representative of the United States is explicitly recorded; that understanding was to the effect that when the wording of the articles then in question became definitive, new texts (*expéditions*) would be drawn up, superseding the convention as signed; this obviously meant new formal instruments signed or authenticated on the part of each Government. Thereupon the convention was resubmitted to the Senate in the form of a New Draft which embodied the Swiss proposals but contained some changes in two articles (1 and 5) and a slight alteration in the English version of the preamble. The Senate advised and consented to the ratification of the New Draft, with an amendment to Article 5. This result was communicated to the Swiss Government; and ratification on each part and the exchange of ratifications followed.

It will be observed that the course agreed on at Bern and stated in the Swiss note of July 5, 1852, was not followed. Strictly speaking, the New Draft *as such* was not communicated to the Swiss Government; that is to say, it was not communicated until after the Senate amendment thereto. Neither the New Draft as such nor the New Draft as amended by the Senate was embodied in any formal international instrument for signature by plenipotentiaries; moreover, the New Draft was obviously intended to be merely a copy of the convention as signed, except in respect of the amended portions; otherwise the convention as signed was controlling, as appears from the proceedings upon the exchange of ratifications, when it was discovered that the wording of one article of the New Draft was incomplete; and, finally, the Swiss instrument of ratification shows that the assent of the Swiss legislative bodies in July 1855 was given, not to the New Draft, but only to the four amended articles.

Under these circumstances the source text is properly, in general, the convention as signed; and it is with the second signed original in the treaty file that the text printed following the headnote has been collated, except for Articles 1, 5, and 19.

Thus the collating of the text here with that of the signed convention extends even to the preamble and to Article 6; the trifling alteration introduced into the English of the preamble upon the second

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submission to the Senate is to be regarded as an attempted correction; and Article 6, from which a few parenthesized words were stricken on the first submission to the Senate, was not thereafter in question.

For Articles 1, 5, and 19 the text is from the "original" New Draft, subject to the Senate amendment to Article 5, which struck out certain words and inserted others in their place; the French equivalent of the inserted words is that written into the Swiss instrument of ratification.

It is to be added that comparison of the texts in four papers, namely, the second signed original, the New Draft, and the respective instruments of ratification, shows (subject to the amendments) no variances of moment, other than those specifically mentioned previously in these notes. There are differences of writing style, slips in spelling and in accents, and inconsistencies of punctuation, the last being mostly cases of commas omitted or inserted; but none of these variances appears either to present any arguable difference of meaning or to be worthy of record.

Effect of the Amendments

Except for the recasting of Article 19 (regarding the exchange of ratifications), the various amendments proposed or made to the articles of the convention as signed were all to clauses of three articles (1, 5, and 6) of those regarding "reciprocal establishments" and the succession to property (Articles 1 to 6); the provisions dealing with consuls (Article 7), commerce (Articles 8 to 12), extradition (Articles 13 to 17), and the period of duration of the convention (Article 18) were not at any time in question.

The final paragraph of Article 1 of the convention as signed reads as follows in the English version:

> On account of the tenor of the Federal Constitution of Switzerland, Christians alone are entitled to the enjoyment of the privileges guarantied by the present article, in the Swiss Cantons; but said Cantons are not prohibited from extending the same privileges to citizens of the United States of other religious persuasions.

Some explanation of the "religious disqualification to citizenship" then existing in Switzerland is in the despatch of Mann of November 30, 1850 (quoted above; see p. 863); the message of the Federal Council to the Federal Assembly dated December 3, 1850, cited above, had this to say regarding the paragraph in question (translation from the French):

> The other exception is for Switzerland alone. As free establishment is not guaranteed by the Federal Constitution except to Swiss citizens of one of the Christian confessions, it could not be assured by convention to foreigners of another religion. This reserve was fundamental, since the Federal Constitution may not be varied by conventions; but it was thought necessary to express it in order to avoid any misunderstanding in the United States and to indicate that the Swiss Cantons are not required to avail themselves of the right which the Federal Constitution grants to them of excluding non-Christians.

The presidential message of February 13, 1851, to the Senate (printed above in these notes) was emphatic in its condemnation of

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the final paragraph of Article 1 of the convention as signed, saying that "neither by law, nor by treaty, nor by any other official proceeding is it competent for the Government of the United States to establish any distinction between its citizens founded on differences in religious beliefs"; but, while the quoted paragraph of Article 1 was deleted, the *status quo* of all constitutional and legal provisions, Federal, State, and Cantonal, was mutually recognized and reserved in the final text (opening sentence of Article 1).

That same qualification was broad enough to include any State or Cantonal laws not permitting aliens to hold or inherit real estate; by the amendments first proposed by the Senate (resolution of March 7, 1851) all references to real property in the convention were to be deleted. This would, as the Swiss Government carefully pointed out in its note of July 5, 1852 (quoted above in translation), have made it at least doubtful whether the provisions of the convention of May 18, 1847 (Document 127, Article 2), in that regard remained in force. Accordingly, the Swiss Government proposed to include similar provisions in this convention, and this course was approved in the presidential message of February 3, 1853 (also quoted above), and the accompanying New Draft; but, although the convention of 1847 had met with no objection in the Senate (Executive Journal, VII, 402, April 26, 1848), the final amendment of the Senate here (*ibid.*, IX, 330–31, May 29, 1854) substituted for the three-year disposal clause in Article 5 of the New Draft (similar to that of Article 2 of the 1847 convention), words leaving the duration of such term to be determined by the laws of the various States and Cantons.

Article 5 of this convention was considered by the Supreme Court of the United States (October term, 1879) in the case of *Hauenstein* v. *Lynham* (100 U.S., 483–91); it was there held that in a State (Virginia) where no statute prescribed the term within which the rights of alien heirs must be asserted, those rights are not barred by lapse of time; until such a law exists, said the Court, the "party entitled can sue whenever he chooses to do so" (*ibid.*, 488).

Articles 5 and 6

The convention with Switzerland of May 18, 1847 (Document 127), was superseded by this convention, particularly by the provisions of Articles 5 and 6; any express statement of the termination of the earlier convention seems to have been deemed unnecessary; see the relevant paragraph in the despatch of Mann of November 30, 1850 (*supra*, p. 863); and in the message (quoted above) of the Federal Council to the Federal Assembly of December 3, 1850, it was said that the convention of 1847 "will thus be replaced by Articles 5 and 6 of the present treaty. This has not been expressed therein because it is understood of itself, for a convention is always abrogated by later articles" (translation from the French).

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ARTICLES 8 TO 12

On March 23, 1899, the United States gave formal notice of the intention "to arrest the operation" of Articles 8 to 12 of this convention; this denunciation was accepted by the Government of Switzerland on May 31, 1899, the articles in question remaining in force for twelve months from the date of notice, or until March 23, 1900 (Foreign Relations, 1899, 753–57).

The previous relevant correspondence is printed in *ibid.*, 740–53. Following the proclamation on May 30, 1898, of the reciprocity agreement between the United States and France of May 28, 1898 (30 Statutes at Large, 1774–76), under section 3 of the Tariff Act of July 24, 1897 (*ibid.*, 203–4), the Swiss Government on June 29, 1898, requested the extension to Swiss imports of the concessions granted to France; the request was grounded on the most-favored-nation clause of Articles 8, 9, 10, and 12 of the convention of November 25, 1850, which, it was said, was "absolutely unlimited"; this request was declined by the Secretary of State (William R. Day) in his answering note to the Swiss Minister at Washington (Jean Baptiste Pioda) of July 29, 1898, for the reason that it had always been the view of this Government "that a reciprocity treaty is a bargain and not a favor, and that it therefore does not come within the scope of the most-favored-nation clause".

The position of the Swiss Government was more fully set forth and argued in the note of September 26, 1898; it was pointed out that in treaties of the United States of about the same period the most-favored-nation clause was followed by a restrictive provision such as "freely, when freely granted to such other nation, or on allowing the same compensation when the grant is conditional"; that during the negotiations of the convention with Switzerland of November 25, 1850, a provision of that nature had been proposed by the American Plenipotentiary but had been abandoned by him "out of friendly consideration for Switzerland"; and that these facts were set forth in the message[1] addressed by the Federal Council to the Federal Assembly on December 3, 1850 (copies of that message for the use of the Department of State and also for each Senator were transmitted by Mann; see the excerpt from his despatch No. 8, of December 26, 1850, quoted above, and also No. 9, of December 27, 1850, in D.S., 14 Special Agents).

To the communication last mentioned the Secretary of State (John Hay) replied on November 21, 1898, maintaining the construction uniformly given to most-favored-nation clauses by the Government of the United States for nearly a century; but, in view of the course of the negotiations of 1850, the contention of the Swiss Government was admitted in the following paragraphs:

> This message [of the Swiss Federal Council of December 3, 1850] represents that the American plenipotentiary who conducted the negotiations in effect agreed to that interpretation of the treaty for which the Swiss Government now contends, and signified it by withdrawing a stipulation from the projet

[1] A copy of that message is with the note of September 26, 1898, in D.S., 5 Notes from the Swiss Legation. A translation thereof is printed above.

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which would have been inconsistent with such interpretation. It further appears that the Swiss Government ratified the treaty under the distinct representation that its construction was the same that it now claims.

In order to ascertain if the convention was also ratified by the Government of the United States under circumstances which necessarily implied a knowledge of that understanding, an examination has been made of the original correspondence of the American negotiator with his Government, and of its connection with its ratification.

As the result of this investigation, it appears that the Executive department was advised by its plenipotentiary of the alleged understanding, that the dispatch indicating it was communicated by the President to the Senate in connection with the treaty submitted for ratification, and that the treaty was ratified without amendment of the clauses in question. [See the despatch of Mann of November 30, 1850, quoted above, especially the paragraph beginning "I have given to Switzerland".]

Under these circumstances we believe it to be our duty to acknowledge the equity of the reclamation presented by your Government. Both justice and honor require that the common understanding of the high contracting parties at the time of the executing of the treaty should be carried into effect.

It is also my duty to advise you that the foregoing recognition of the equity of the claim of your Government compels us at the same time to regard the Articles VIII, IX, X, XI, XII, of the treaty as henceforth constituting an exception to the otherwise uniform policy of the United States. This policy has been to treat the commerce of all friendly nations with equal fairness, giving exceptional "favors" to none. Should this Government continue to give to Swiss products gratuitously all advantages which other countries only acquire for an equivalent compensation, it would expose itself to the just reproaches of other Governments for its exceptional favoritism. We desire that our friendly international policy should be maintained in its uniform application to all our commercial relations.

It may, therefore, be necessary, in case the Governments of the United States and of Switzerland should not be able to agree upon some practicable arrangement of the matter in question, that the President should communicate to your Government notice of his intention to arrest the operation of the treaty of 1850, or of the clauses of said treaty numbered from VIII to XII.

Articles 13 to 17

The extradition articles of this convention were adapted, with very little change except in one respect, from those contained in the extradition convention (of six articles) with the Swiss Confederation signed at Paris on September 15, 1846, by the respective diplomatic representatives there of the two countries, William Rufus King, American Minister, and Georges de Tschann, Swiss Chargé d'Affaires (D.S., Unperfected N3); these articles differ materially from those of the convention of 1846 only in that they conform to the action of the Senate thereon; that body, on March 3, 1847, amended the convention of 1846 by striking out from Article 1 thereof the clause which provided that neither party should be required to deliver up its own citizens (Executive Journal, VII, 237). As the time [1] allowed for the exchange of ratifications of that convention was only six months, it was by the Department of State "regarded as having lapsed", and the Swiss consul at Alexandria, Virginia, Antoine Charles Cazenove, who was then engaged in the negotiations which resulted in the convention with Switzerland of May 18, 1847 (Document 127), was so informed

[1] The place of exchange was not stated, but was assumed to be Paris, the place of signature; in 1847 there was no diplomatic representative of the United States at Bern or of Switzerland at Washington.

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(D.S., 15 Instructions, France, 55–58, Secretary of State Buchanan to Richard Rush, Minister at Paris, September 25, 1847). It was not, however, until the receipt of that instruction at Paris that the circumstances were known either to the American Minister there (then Richard Rush) or to the Swiss Chargé d'Affaires (D.S., 31 Despatches, France, No. 7, October 30, 1847).

Perhaps the mere expiry of the period allowed for the exchange would not in itself have prevented the consummation of the convention of 1846, as both Governments might have consented to action at a later date; at that time (before the Swiss Constitution of 1848) the assent of all the twenty-two Cantons to an extradition convention was requisite, and certain Cantons had made a point of the clause deleted by the Senate (D.S., 30 Despatches, France, No. 35, September 15, 1846, and enclosures); such unanimous assent to the convention of 1846 having been given, ratification on the part of Switzerland followed on January 23, 1847, and the instrument was sent to the Swiss Chargé d'Affaires at Paris for exchange (Repertorium der Abschiede der eidgenössischen Tagsazungen aus den Jahren 1814 bis 1848, II, 134); and it is clear that the Swiss Government was unable to accept the Senate amendment, for in 1848 (the exact date is not given), when the action of the Senate was known to the Swiss Diet, eleven Cantons still approved the original bases of negotiations, with only six contra (*ibid.*, 135; see also the paragraphs on the subject in the despatch of Mann of November 30, 1850, and compare the instruction to him of June 15, 1850, both printed above).

Articles 13 to 17 of this convention were superseded and expressly repealed by the extradition treaty signed at Washington on May 14, 1900, which went into effect on March 29, 1901 (see Article 14 of that treaty).

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18 Statutes at Large, pt. 2, Public Treaties, 325-26

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GREAT BRITAIN : DECEMBER 9, 1850

Protocol of the Cession of Horseshoe Reef, signed at London December 9, 1850. Original in English.
As to ratification, see the editorial notes. Not proclaimed.

Protocol of a Conference held at the Foreign Office December 9. 1850.

Abbott Lawrence, Esquire, the Envoy Extraordinary and Minister Plenipotentiary of the United States of America at the Court of Her Britannic Majesty, and Viscount Palmerston, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs, having met together at the Foreign Office;—

Mr Lawrence stated that he was instructed by his Government to call the attention of the British Government to the dangers to which the important Commerce of the great Lakes of the Interior of America, and more particularly that concentrating at the Town of Buffalo near the Entrance of the Niagara River from Lake Erie, and that passing through the Welland Canal, is exposed from the want of a Lighthouse near the outlet of Lake Erie. Mr Lawrence stated that the Current of the Niagara River is at that spot very strong, and increases in rapidity as the River approaches the Falls; and as that part of the River is necessarily used for the purpose of a harbour, the Congress of the United States, in order to guard against the danger arising from the rapidity of the Current, and from other local Causes, made an appropriation for the construction of a Lighthouse at the outlet of the Lake. But on a local Survey being made, it was found that the most eligible Site for the erection of the Lighthouse was a Reef known by the Name of the "Horse-shoe Reef," which is within the Dominions of Her Britannic Majesty; and Mr Lawrence was therefore instructed by the Government of the United States to ask whether the Government of Her Britannic Majesty will cede to the United States the Horse-shoe Reef, or such part thereof as may be necessary for the purpose of erecting a Lighthouse; and if not, whether the British Government will itself erect and maintain a Lighthouse on the said Reef.

Viscount Palmerston stated to Mr Lawrence in reply, that Her Majesty's Government concurs in opinion with the Government of the United States, that the proposed Lighthouse would be of great

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advantage to all Vessels navigating the Lakes; and that Her Majesty's Government is prepared to advise Her Majesty to cede to the United States such portion of the Horse-shoe Reef as may be found requisite for the intended Lighthouse, provided the Government of the United States will engage to erect such Lighthouse, and to maintain a Light therein;—and provided no Fortification be erected on the said Reef.

Mr Lawrence and Viscount Palmerston, on the part of their respective Governments, accordingly agreed that the British Crown should make this Cession, and that the United States should accept it, on the abovementioned conditions.

ABBOTT LAWRENCE.
PALMERSTON

NOTES

The original of the protocol of December 9, 1850, is in D.S., 61 Despatches, Great Britain, enclosure to despatch No. 92, of the same date, from Abbott Lawrence, Minister at London; that despatch, which was received on January 2, 1851, reads:

> I have the honor to enclose the original Protocol of a Conference held at the Foreign Office this day between Lord Palmerston and myself, at which the transfer of Horse Shoe Reef to the United States was finally agreed upon and recorded on the conditions set forth in the enclosed.

Reading the signature of Abbott Lawrence, one would naturally take the family name to be "Laurence"; and in the body of the original protocol, where the name appears six times, it seems in each case to be so written; the slip was of frequent occurrence in English prints and manuscripts of the time; in the text of all papers here included, the correct orthography only is given.

HORSESHOE REEF

Lake Erie flows northward into the Niagara River, the water front of the port of Buffalo extending along the eastern shore; almost at the outlet of Lake Erie, there are ledges of rock, nearly all of which are below water at any usual level of the lake; the position of these ledges, or sunken rocks, is approximately from one-half to two miles to the west and northwest of the South Pier Light (see the U.S. Lake Survey Chart of Buffalo Harbor, catalogue No. 314); four names have been given to various portions of the ledges within the area mentioned, Horseshoe Reef to the east, Middle Reef to the west, Bird Island Reef to the north, and Limekiln Reef to the northwest; apart from Limekiln Reef, the sunken rocks lie generally on the eastern, or American, side of the international boundary. While the locus here in question is that which appears on most maps as "Middle Reef", it was referred to at the time in legislation, in reports and estimates, and throughout the negotiations, as "Horseshoe Reef"; that usage is here followed; so for this discussion Horseshoe Reef is the reef of the lighthouse of that name (see the map facing p. 920).

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The act of March 3, 1849, making appropriations for lighthouses, lightboats, buoys, etc., includes the following (9 Statutes at Large, 380–82):

That the following appropriations be, and the same are hereby, made, and directed to be paid out of any money in the treasury not otherwise appropriated, to enable the Secretary of the Treasury to carry the provisions of this act into effect: *Provided, however*, If a good title to any land which it may be necessary to use cannot be obtained on reasonable terms, or the exclusive right to such land cannot be acquired by cession, where the interest of the United States demands it, before the appropriation would by law fall into the surplus fund, in any and all such cases the appropriations shall be applicable to the objects for which they are made, at any time within two years after the first meeting of the legislature subsequent to the passage of this act, in any State wherein any such land may be situated, to wit:

. . . . . .

New York.—For a light boat on Horse Shoe Reef, Niagara River, ten thousand dollars; or for the erection of a light-house instead thereof, if, after the survey herein provided for, it shall be deemed more advisable, twenty thousand dollars.

For four spar buoys, to mark the channel from the aforesaid shoal to Bird Island, three hundred dollars.

. . . . . .

SEC. 2. *And be it further enacted*, That if the Fifth Auditor shall report, in any of the cases herein provided for, that preliminary surveys are necessary to determine the site of a proposed lighthouse or light-boat, or to ascertain more fully what the public exigency demands, the Secretary of the Navy shall, thereupon, appoint one or more officers of the navy, not under the grade of commander, to perform the required service. . . .

SEC. 3. *And be it further enacted*, That any officer so appointed shall forthwith enter upon the discharge of the duty, and after fully ascertaining the facts, shall report: first, whether the proposed facility to navigation is the most suitable for the exigency which exists; and second, where it should be placed if the interests of commerce demand it; third, if the thing proposed be not the most suitable, whether it is expedient to make any other kind of improvement; fourth, whether the proposed light has any connection with other lights, and if so, whether it cannot be so located as to subserve both the general and the local wants of trade and navigation; and fifth, whether there be any, and if any, what other facts of importance touching the subject.

SEC. 4. *And be further enacted*, That all such reports shall, as speedily as may be, be laid before the Secretary of the Treasury, and if such as to authorize the work without further legislation, he shall forthwith proceed with it, otherwise such reports shall be laid before Congress at the next ensuing session; but in all cases where the Fifth Auditor does not report such preliminary examination as expedient, the provisions of this act shall without delay be carried into execution.

Pursuant to that statute, Commander Abraham Bigelow, U.S.N., reported, after examination, in favor of a lighthouse on Horseshoe Reef at an estimated cost of $45,000. The following paragraph is from the report of Stephen Pleasonton, Fifth Auditor of the Treasury and General Superintendent of the Lighthouse Establishment, dated December 29, 1849, and transmitted to the Speaker of the House of Representatives December 31, 1849 (Compilation of Public Documents and Extracts . . . Relating to Lighthouses, 535–40):

Commander Bigelow was appointed to examine this position, and to report upon the expediency of erecting one or the other of these lights. He reported in favor of a light-house on Horseshoe reef, at an estimated cost of $45,000. It was

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afterwards found, however, upon inspecting the map [1] jointly formed by the English and American commissioners of the boundary between the possessions of the two countries, deposited in the Department of State, that Horseshoe reef was within the jurisdiction of Great Britain. The parties interested, I understand, will, through the Department of State, seek permission from the British government to erect the light-house. In case permission should be granted, a further appropriation will be necessary of $25,000.

On July 28, 1849, Pleasonton had written to Martin B. Scott, a merchant of Cleveland, Ohio (Department of Commerce, Bureau of Lighthouses, 28 Lighthouse Letters, May 14, 1849–January 25, 1850, 239–40):

Col Abert [2] was incorrect in stating to you that he had no doubt the Horse Shoe Reef, at the entrance of Niagara River was within our jurisdiction. I have taken occasion to examine the map [1] in company with Major Graham [3] of the Topographical Corps in the Department of State formed and signed by our Commissioners and the English Commissioners, and we find by it that the Horse Shoe Reef is about two hundred feet on the British side of the boundary line. This settles the matter.

It would answer no purpose to apply to the British Government for permission to build a Light House within their jurisdiction. This was once done by Mr. Livingston, when Secretary of State, in respect to some Lights on the Bahama Banks. The reply was that no permission of that kind could be granted but as the American Government considered the Lights necessary, they would build them themselves, and this was done.[4] It will behove the parties interested therefore, to write in an application to our Secretary of State to interest himself with the British Government to cause the Light at Horse Shoe reef to be built. It would be stepping out of the line of my duty to do this. All I can do now is to report the case to Congress when it meets in December next.

The Negotiations

On December 24 and 28, 1849, letters regarding Horseshoe Reef were written by the First Comptroller of the Treasury, Elisha Whittlesey, to Secretary of State Clayton. The texts of these, with the "report" (May 28, 1849) and the "estimate" which were enclosed with the first and the "statement" by Colonel Abert (December 27) which was enclosed with the second of them, follow (D.S., Miscellaneous Letters, November–December 1849; the "report" is from a photostat received, with others hereinafter cited, from Ottawa with despatch No. 411, of February 18, 1936, D.S., File 026 Treaties/1890; Dominion Archives, Public Archives of Canada, G136, pp. 232–48; the "estimate" is from a photostat received from London with despatch No. 1919, of January 21, 1936, D.S., 026 Treaties/1859; Public Record Office, F.O. 5 : 521):

[1] As to this map 16, with the report of June 18, 1822 (Document 42), of the Commissioners under Article 6 of the Treaty of Ghent, see below.

[2] John James Abert, Colonel of Topographical Engineers, U.S.A.

[3] Brevet Lieutenant Colonel James D. Graham, U.S.A.

[4] This subject was of earlier cognizance than is here indicated (see American State Papers, Foreign Relations, V, 472–76; VI, 753–57); and there was considerable correspondence on it in 1831–33 (see, e.g., D.S., 14 Instructions, Great Britain, 100–14, August 1, 1831; 41 Despatches, Great Britain, Nos. 82 and 85, August 22 and September 6, 1833).

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[*Mr. Whittlesey to Mr. Clayton, December 24, 1849*]

Your attention is envited to a memorial signed by a part of the ship owners on Lake Erie, and the Upper Lakes, whose vessels enter the Harbor of Buffalo, or the Niagara River. Congress at its last session appropriated ten thousand dollars for a light boat on Horse Shoe reef in Niagara River: or twenty thousand dollars for a light house instead of a light Boat, if after the survey, the light house should be deemed to be the best.

When this appropriation was made, there was no doubt that the Horse Shoe reef in the Niagara River, was within the territory and jurisdiction of the United States. On surveying it however, it is ascertained, that it is on the Canadian side of the territorial line. The main channel is between this reef, and the Canadian Shore. A copy of the report, and of the estimate of the cost of constructing the foundation, and building a light house, made by the Engineer, will accompany this.

The engineer, for reasons, which I think, are intirely satisfactory, recommends the erection of a light house. He mentions its importance in his report, which will be fully sustained by those acquainted with the commerce, and navigation of the Lakes.

Mr Clay when Secretary of State, having invited the British Government to the necessity of a light on Long Point in Upper Canada, to protect the lives and property of the citizens of both Nations, exposed on Lake Erie;[1] the said Government with her usual liberality, took measures to have a light house erected at the place mentioned. As the Horse Shoe reef, is more immediately connected with the territory of the United States, than it is, with that of Great Britain, perhaps the latter, will permit the former, to occupy it, for the joint benefit of both Nations. It is of great importance, that a decision be made during the present session of Congress: that an other appropriation may be made to complete the Light house, if its expence shall devolve on the United States.

[*Report of Commander Bigelow, dated Buffalo, May 28, 1849*]

In conformity with your Instructions of 30th March last, I have made an examination with reference to locating the Light House, or Light Boat, authorized by Act of Congress approved 3rd March 1849, to mark the entrance of Niagara River, and have to report 1st With regard to the necessity of such a light, the Harbour of Buffalo which is now the only shelter in this vicinity does not afford sufficient accommodation for the numerous Vessels navigating the Upper Lakes, a large proportion of which receive and deliver Cargoes at this Port. This inconvenience has long been felt and is increasing with the rapidly increasing Commerce of the West. Vessels encountering the severe Gales, which prevail on Lake Erie especially in the Months of October and November, within a distance of 30 or 40 miles above Buffalo, have no alternative but to attempt to make this Harbour, or Creek, as it was formerly termed. To effect this it becomes necessary to luff close around the Head of the Southern Pier, on which the Light House is situated. This is a difficult manœuvre in a gale, and the consequence is, that many Vessels fall to Leeward of the lower or Northern Pier, and are stranded on the beach. Those which let go their Anchors as soon as they are under the lee of the Southern Pier, which projects further out than the Northern, if so fortunate as to hold on, generally find themselves in contact with other Vessels which have preceded them. Much damage and loss of property have been sustained, and losses must continue to occur until additional Harbour room is afforded. This consideration alone without any reference to the claims of the Citizens of Black Rock, and Tonawanda, to have the facilities, which are enjoyed at other points, extended to them, also, in my opinion, demands the Establishment of the proposed Light. To render such a Light "useful to navigation" however, and to enable those who desire to seek a shelter in Smooth water below the rapids at Black Rock, to make it in safety, it will be necessary to

[1] See D.S., 3 Notes to Foreign Legations, 428, February 6, 1828.

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establish also a Beacon Light on the Black Rock Pier. The Buoys which now mark the Channel, and the marks on Shore are useless in the night, but with the aid of such a light no danger need be apprehended. 2ndly As to the erection of a Light House on Shore in preference to building on a Rock in the Water. The main Channel of the River being on the Canada side no light on the Mainland on this side would be of any use. The nearest point above water within the Territory of the United States is the end of the Southern Pier of Buffalo Harbour, on which a light is already placed, the Question is thus narrowed down to a choice between a Light Boat, and the erection of a Light House on the Horse Shoe Reef. With regard to the former in addition to the usual objections against Light Boats, such as is their liability to be driven from their moorings at the moment when most wanted, the expense of keeping them in repair, and the number of persons required to manage them, in case of their being driven from their moorings, or being compelled to slip them, there is in this case that of *bad holding ground*. The bottom where a Light Boat should be moored, is composed of Rock generally covered with a thin coating of Sand which has been washed over it. To enable a Light Boat to hold in, unusually heavy moorings would be required, and it would be necessary to prevent them from being swept away by the Ice that they should be taken up every Fall. This and laying them down again in the Spring would be attended with considerable expense. The Horse Shoe Reef is situated on the East side of the Channel of the River at the distance of about three fourths of a mile from the Canada shore, and consists of solid limestone Rock. It lies N.E. by N½ N; and SW by W½W., nearly parallel with the Canada shore. It is 1087 feet long within a line of Soundings of 8 to 9 feet—the average breadth for three fourths of its length is 120 feet;—at the foot is about 200 feet. There are in some places only 2½ and 3 feet, but the average depth is about 6 feet, at the present stage of the water during a calm. The current runs over it N½E, at the rate of a mile per Hour, but both the Current and depth are affected by the Winds, being increased by Southerly winds, and decreased by those from the North. A Pier on which a Light House could be erected might be built on this Reef and should be some 30 or 40 Feet below its head on account of being less exposed to the running Ice, which is the only danger to be apprehended;—the pier should present an acute Angle to the Current. Cribs of Timber could be sunk to enclose the space required to erect the Buildings, this space might be filled with Concrete—the Cribs could be protected from the Ice with iron plates or bars so as effectually to resist it; but in case of their giving way, the concrete would afford sufficient protection to the Buildings which might be erected on it, to give ample room for the Buildings, and that they might stand sufficiently back from the angle to secure them from Injury from any ice that might lodge on it, the Pier should not be less than 150 feet in length. It would be desirable that this Light should be as low as possible, on account of being able to judge more accurately of its distance when passing it. It must however be borne in mind that a rise of 11 feet above the ordinary stage of the water has been known to take place during a heavy gale. Allowances should be made for this, and also 5 or 6 feet for the height of the Waves. All the materials for such a Work are at hand, the Stone could be obtained at the State Quarry, at Black Rock, probably at no other cost than the transportation. I am decidedly of opinion that it will be more "useful to navigation", to erect a Light on this Reef than to moor a Light Boat in the Channel, and that in the end it will prove more economical. This Light which should be distinguished by its Colour, or in some other mode to prevent its being mistaken for that of Buffalo, could be shewn earlier in the Spring, and later in the Fall, than one from a Light Boat; as it would be necessary, to remove the Boat before the Ice could make, and the weather in the Spring might prevent her being placed in her Station, as soon as she would be required. I forward herewith a Chart,[1] shewing the position of the Reef, on which is marked the Location I would recommend for the Pier and Light House, also plans for the form of the Pier.

These Plans are mere suggestions. Should it be decided to construct the work, the Engineer appointed to superintend it will no doubt improve upon them. I

[1] This chart of Horseshoe Reef, 1849, is described below.

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also forward an Estimate of the probable cost of such a work, made at my request by Mr Isaac Smith of this place, who superintended the erection of the Light-house, on the Pier which marks the entrance of this Harbour. I consider a Beacon Light on Black Rock Pier essential to render the main Light of any Protectional use.

The spot where it should stand is marked on the Pier, at the distance of 218 Rods above the Custom House at Black Rock Ferry. There are ample width and depth to render it perfectly safe after passing the Horse Shoe Reef, to run direct for this Beacon, and I have no doubt that should these Lights be established great use would be made of this Channel, and that much property and perhaps many lives would be saved by it.

The Buoys to mark the Channel from Horse Shoe Reef to Bird Island, for which an Appropriation has been made by Congress are not required for that purpose but three of them could be placed to advantage to mark the Sand Pits, which make out at the heads of Grand Snake and Strawberry Islands.

[*Estimate*]

Estimate for a foundation, Light House, and Keeper's House, on the Reef at the outlet of Lake Erie, near Buffalo;

Suppose the foundation equal to 150 feet length, 60 feet width, and 25 feet height, above the rock bottom.

Suppose average depth of water on Reef (now)			6 ft.
" a rise of the lake to highest point on record as in 1837			2 ft.
" a rise by wind above ordinary level as in Oct. 1844			11 ft
" the wave to rise above water level			4 ft.
Allow additional height so as to be above highest wave			2 ft
			25 ft.
Such a foundation formed of Concrete will require 225,000 Cubic ft. of Stones, which, to cover Expense of transportation and hauling at 4 cts		$9. 000	
Suppose the interstices between the Stones equal to ⅓ the whole mass, to be filled with Concrete, ⅓ of 225,000 = 75,000 ft at 13 cts =		9, 750	
Labor, preparing Concrete, transportation and depositing the same at 4 cents		3, 000	$21, 750
Suppose a Curb forming a hollow square 150 ft by 60 ft. to produce still water within during the Construction of the foundation will require Crib work equal to 456 ft. long 16 ft. wide, 15 ft. high above rock bottom, = 13,680 linear feet of timber, one foot square, which with counter hewing, framing, dowels &c at 15 cts. =		$2, 052.	
1200 cross ties, 16 ft. long, 4 x 6 inches at 64 cts. each		768.	
Stones to fill such Crib work = 95,760 ft at 4 cts	$3, 830. 40		
Deduct cost of half these stones as they can be subsequently used in the main work	$1. 915. 20		
	1. 915. 20	1. 915. 20	
Iron bands around the corners bolts Spikes and clamps		264. 80	$5. 000
Light House 20 ft. high above foundation Keepers House &c.—say			3, 000
Steam Tug, Boats &c			3, 500
5 Decked scows, winces cranes &c. at $500			2. 500
Chains, Anchors, tackles, tools &c			750

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Labor not embraced in above items equal to 5 Men 2 years, at $150 per annum	$1500	
Superintendance, Office Expenses &c. 2 years	3000	4 500
		$41, 000
Contingencies about 10 pr Ct		4. 000
		$45, 000

BUFFALO *5 May, 1849.*

[*Mr. Whittlesey to Mr. Clayton, December 28, 1849*]

This will be accompanied by a map [1] of the Survey of the head of the Niagara River, to ascertain the exact locality, shape and depth of Horse Shoe Reef.

Also by a statement, by Col Abert, of the Topographical Corps of Engineers, showing the amount of the commerce at Buffalo, and the tonnage for the District of Buffalo Creek. The commerce, exceeds, the amount of Sixty millions, the whole of which, has been created since the close of the war with Great Britain by the treaty of Ghent; and is increasing more rapidly now than at any previous period. The tonnage is only the tonnage for the District of Buffalo. The British Government will greatly benefit the commerce of the Lakes, and advance the interests of her Canadian possessions, by having the Light erected on the Reef mentioned. It can hardly be longer dispensed with. In the times of sudden storms Vessels, bound to Lake Ontario through the Welland Canal will be compelled to seek a harbor at Black Rock.

[*Colonel Abert to Mr. Whittlesey, December 27, 1849*]

In reply to your letter of the 20th instant, I have the honor to state that from information collected in this office, the Commerce of the City of Buffalo, was for the year 1848 as follows, in reference exclusively to Lake trade.

Exports	37. 996. 658
Imports	22. 143. 404
Total	$60. 140. 062

And the tonnage for the District of Buffalo Creek was 44.744 tons.
And the value of that tonnage is stated at $1.722.400

Copies of those two letters from the First Comptroller of the Treasury to the Secretary of State, with the accompanying papers, were transmitted to Lawrence at London with this instruction of December 29, 1849 (D.S., 16 Instructions, Great Britain, 78):

I transmit to you, herewith, a copy of two letters, with accompanying papers, bearing dates the 24th and 28th instant, respectively, which were addressed to this Department by the Comptroller of the Treasury, relative to the erection of a light house on Horse Shoe Reef, at the entrance of Niagara river.

Congress at its last session made an appropriation for this purpose, but it appears that it was subsequently ascertained that the reef in question was within the territory and jurisdiction of Her Britannic Majesty. As the erection of a light house at the point designated is a subject in which both Governments are interested, I have to request that you will be so good as to bring it to the notice of Her Majesty's Government, with the view of ascertaining whether it will cede to the Government of the United States the aforesaid Horse Shoe Reef, or such

[1] This chart of Horseshoe Reef, 1849, is described below.

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part of it as may be necessary, for the purpose specified; or, if not, whether it will itself erect a light house on that reef. An early decision of the matter is desirable.

Lawrence communicated his instructions to Viscount Palmerston, Secretary of State for Foreign Affairs, with this note of January 26, 1850 (D.S., 60 Despatches, Great Britain, No. 26, February 5, 1850, enclosure):

I have been instructed to call the attention of Her Majesty's Government to the growing commerce of the great lakes of the interior of America (more particularly that concentrating at Buffalo and that passing through the Welland Canal) and to the dangers to which it is subjected from the want of a Light House at the outlet of Lake Erie. The current of the Niagara River, which is wanted for a harbor, is here very strong, and rapidly increases as it approaches the falls. The necessity of guarding against this and other dangers induced the Congress of the United States at its last session to make an appropriation for the construction of a light house at this place: but on examination it was found that the Horse Shoe Reef, the point indicated in the bill, was within the domains of Her Majesty.

I am instructed to represent to Her Majesty's Government the importance to both Governments of a light at this point, and to ask whether it will cede to the United States the Horse Shoe Reef or such parts thereof as may be necessary for that purpose? or, if not, whether it will itself erect and maintain a light on the reef? and to beg the favor of an early decision.

I have the honor to enclose a copy of my instructions on this point, with all the enclosures, and the original chart [1] transmitted with them. . . .

Additional papers from the First Comptroller of the Treasury were transmitted to Lawrence with the instruction of February 8, 1850 (D.S., 16 Instructions, Great Britain, 85), and by him communicated to the British Government on March 7 (D.S., 60 Despatches, Great Britain, No. 36, March 7, 1850); these were a copy of resolutions of the Board of Trade of Cleveland, Ohio, of January 18, 1850, and a copy of a petition addressed to Viscount Palmerston by residents of Hamilton, Canada West (D.S., photostats from Dominion Archives, Public Archives of Canada, G136, pp. 285–97); and following instructions of April 1, Lawrence informed Palmerston on April 17 of a memorial from many of the leading merchants of Buffalo and a petition of many hundred citizens of that city setting forth the necessity of a lighthouse on Horseshoe Reef (D.S., 16 Instructions, Great Britain, 87; 60 Despatches, Great Britain, No. 43, April 17, 1850, enclosure); two other instructions to Lawrence on the subject were of small importance, and even the earlier of them was not received in London until after the decision of the British Government had been reached (D.S., 16 Instructions, Great Britain, 90, 95, June 10 and August 26, 1850).

In the meantime, the questions before the British Government had been referred to Earl Grey, Secretary of State for the Colonial Department (D.S., 60 Despatches, Great Britain, No. 34, February 21, 1850, enclosure, Palmerston to Lawrence, February 20); by note of March 19 Lawrence was informed by Palmerston that he had "received an answer from the Colonial Department stating that, as the subject is one for the consideration of the Canadian Government, upon whom the expense of building and maintaining the Light House

[1] This chart of Horseshoe Reef, 1849, is described below.

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must devolve, Lord Grey has thought it necessary to consult the Governor General of Canada [the Earl of Elgin] before answers are returned to the enquiries contained in your letter of the 28th [26th] ultimo [January]" (*ibid.*, No. 38, March 22, 1850, enclosure); and Lawrence reported that he had "seen Lord Grey upon the subject, and he seemed to think that such a structure would be highly advantageous to both countries. Lord Elgin, however, has the decision of the question" (cited despatch of March 22, 1850).

Communications from the Colonial Office to the Governor General of Canada were under dates of March 7, March 19, and May 1, 1850 (Nos. 472, 478, and 486; D.S., photostats from Dominion Archives, Public Archives of Canada, G136, pp. 205–57, 285–97, 372–75); with these were copies, respectively, of the notes from Lawrence of January 26, March 7, and April 17, and the enclosures to the two of earlier dates (except, it seems, the chart which accompanied the report of Commander Bigelow of May 28, 1849). Consideration of the papers from the Colonial Office (except No. 486, of May 1, 1850) was had by the Executive Council of the Province of Canada, sitting at Toronto, then the capital of the Province; on April 23, 1850, the following minute was passed, a copy of which was transmitted to Grey by Elgin a week later (D.S., photostats from Dominion Archives, Province of Canada, Minutes of Executive Council, State Book K, pp. 211–12; see also Public Archives of Canada, G461, p. 424):

> The Committee of Council have had under their consideration on Your Excellency's reference two Despatches of the Right Honorable Earl Grey, dated respectively the 7th and 19th March ultimo, transmitting, with other documents, the copy of a letter with its enclosures from the Under Secretary for Foreign Affairs; from which it appears that the United States Government are anxious to ascertain whether Her Majesty would cede to them Horse Shoe Reef at the outlet of Lake Erie, or such part thereof as should be necessary, for the purpose of erecting a Light House thereon; or whether the British Government would itself undertake to build and maintain a Light House on the Reef. His Lordship at the same time desires that Your Excellency will enable him to return an answer to both these propositions.
>
> The Committee of Council can see no objection to the cession to the American Government of such portion of the Horse Shoe Reef as may be required for the erection and maintenance by that Government of a Light House thereon; and they consider such a work would be a great benefit to the navigation of the adjacent waters. They therefore respectfully advise that Your Excellency submit to the Right Honorable the Secretary for the Colonies the propriety of humbly advising Her Majesty to cede to the American Government such portion of the reef in question as may be found to be required for the proposed purpose; and such cession being made conditional upon their actually erecting and maintaining such Light House.

The British Government had been asked whether it would cede the requisite portion of the reef so that a lighthouse might be there built and maintained by the United States, or, if not, whether it would itself erect a lighthouse. The decision was to make the cession; and that decision was communicated to Lawrence by the note of Palmerston of June 14, 1850, in these terms, which left the form of the act of cession (whether by convention, protocol, or exchange of notes) to the choice of the Government of the United States (D.S., 61 Despatches, Great Britain, No. 75, September 12, 1850, enclosure):

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With reference to your letters of the 28th [26th] of January, of the 7th of March, and of the 17th of April last, relative to the proposed erection of a Light House upon Horse Shoe Reef at the outlet of Lake Erie, I have the honor to inform you that Earl Grey Her Majesty's Secretary of State for the Colonial Department, having consulted the Governor General of Canada upon the subject of those letters, is prepared to advise Her Majesty to cede to the United States' Government such portion of the Reef in question as may be found requisite for the proposed building, provided that the United States will engage to complete that building, to keep it in repair, and to maintain the Light therein.

As it seems necessary that this cession should be recorded by some formal act, I have to request that you will inform me whether you wish that the matter should be settled by a Convention concluded between the two States, by a Protocol, or by an interchange of official notes.

From "some unaccountable omission" on the part of Lawrence, the sending of a copy of the foregoing note to Washington was delayed until the date of his despatch of September 12, 1850 (*ibid.*), asking instructions; these were given by Secretary of State Webster under date of September 30, as follows (D.S., 16 Instructions, Great Britain, 97):

I have the honor to acknowledge the receipt of your despatch No 75, of the 12th instant, relative to the erection of a lighthouse on Horse Shoe Reef, at the entrance of Niagara river.

In reply, you are informed that you are authorized to enter into an arrangement with the British Government, by a protocol, or by an interchange of official notes between yourself and the British Secretary of State for Foreign Affairs, as suggested by Lord Palmerston in his note to you of the 14th of June last, for ceding to the United States' Government such portion of the reef in question as may be found requisite for the purposes of the proposed building. This, it is thought, will be the simplest way of obtaining the object in view, and equally effective with a more formal arrangement.

By the instruction just quoted, alternative forms of the three suggested for the act of cession were regarded as suitable; Webster considered that either a protocol or an interchange of official notes would be "equally effective with" a convention; he thus deemed submission of the arrangement to the Senate not required; the ground of this opinion was doubtless the statutory authority given by the act of March 3, 1849 (quoted above).

Consideration in London of questions of form and wording was followed by the signing of the protocol of cession on December 9, 1850, an original whereof was on the same day transmitted by Lawrence to the Secretary of State (see D.S., 61 Despatches, Great Britain, Nos. 84, 89, 91, and 92, October 24, November 15, December 6, and December 9, 1850); on December 16 a copy was sent to the Governor General of Canada by the Secretary of State for the Colonies (D.S., photostats from Dominion Archives, Public Archives of Canada, G137, pp. 469–77).

Ratification

The wording of the protocol is definitive and clearly indicates that it was deemed effective as of its date and not subject to ratification on either part; this appears to have been the view of Secretary of State Webster, for by January 9, 1851, just a week after the

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instrument had reached Washington, a copy of the protocol had been received at the Treasury and the Committee of Commerce of the House of Representatives had been officially informed thereof (see the letter of Pleasonton of January 9, 1851, quoted below); but it seems probable that President Fillmore (who took office on July 10, 1850) was unaware of the negotiations, which had been initiated under the previous administration of President Taylor; if this be so, Fillmore had not been consulted when the instruction of September 30, 1850 (quoted above), was written; in any case, the protocol was now submitted to him, and he wrote the following holograph letter of January 10, 1851 (misdated 1850; D.S., Miscellaneous Letters, January 1851):

WASHINGTON, *Jany. 10. 1850*

To the SECY. OF STATE

MY DEAR SIR I have the honor to return herewith the Drft of letter to Mr. Lawrence, directing him to accept the protocol with Lord Palmerston, ceding the Reef, called the "*Horse Shoe*" at the foot of Lake Erie, and stipulating on our part to erect and maintain a Light House thereon.

I suppose the Reef to be what is usually called Bird Island, and a light house would doubtless be beneficial, but the ice drives down there with such tremendous force, that it must be erected at great cost or it can never stand.[1] I should like to know who recommends this before we enter into a treaty to *maintain* a light there.

Truly Yours

MILLARD FILLMORE

A week later Webster wrote to the President (*ibid.*): "Are you now satisfied of the propriety of ratifying the Protocol about the Light house on Horse Shoe Reef?" The holograph answer, written in red ink and initialed "M.F.", is at the foot of the enquiry: "Yes Sir. Ratify". To Lawrence, accordingly, this instruction was sent (D.S., 16 Instructions, Great Britain, 109–10, January 17, 1851):

I have the honor to acknowledge the receipt of your despatches to Nº 92, inclusive; and to inform you that the President, to whom your letter of the 9th ultimo has been submitted, approves of your proceedings respecting the cession of Horse-shoe Reef to the Government of the United States, as set forth in the protocol of the conference which was held at the British Foreign Office between yourself and Lord Palmerston on the 9th of December last. You will accordingly address a note to the British Secretary of State for Foreign Affairs acquainting him that the arrangement referred to is approved by this Government.

The note written by Lawrence pursuant to that instruction was in these terms (D.S., 61 Despatches, Great Britain, No. 100, February 14, 1851, enclosure):

[1] President Fillmore was from Buffalo and was obviously well acquainted with the locus. Bird Island Reef, as has been said, is the name given to the northern portion of the ledges, or sunken rocks, near the outlet of Lake Erie; that reef lies close to the American shore. On early maps, including maps 16 and 17 of the boundary maps of 1822 (referred to below), Bird Island is shown as an island; the following is from the Buffalo Commercial Advertiser of January 23, 1851: "Bird Island was declared by the Commissioners [under the Treaty of Ghent] to be in our own territory. At that time (1822) it was a rocky Island of small extent, rising several feet above the surface of the Lake, but was reduced below the surface by the removal of the stone which were used for both the State Pier at Black Rock and the Pier for Buffalo Harbor; it now forms the head of the State Pier in the Niagara River".

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The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of The United States of America has been instructed by his Government to acquaint Viscount Palmerston, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs, that The President of The United States approves of the proceedings of The Undersigned respecting the cession of Horse Shoe Reef to the Government of The United States, as set forth in the Protocol of the Conference held at the Foreign Office between Lord Palmerston and the Undersigned on the 9th of December last.

The Undersigned renews to Viscount Palmerston the assurance of his distinguished consideration

(signed) ABBOTT LAWRENCE.

138 PICCADILLY *10 Feb'y 1851.*

The President's approval was communicated by the Colonial Office to the Governor General of Canada on February 24, 1851 (see D.S., photostats from Dominion Archives, Public Archives of Canada, G138, pp. 117–19).

CONDITIONS OF THE CESSION

The cession was doubly conditional; one proviso was that "no Fortification be erected on the said Reef"; more important was the obligation expressed in the words "provided the Government of the United States will engage to erect such Lighthouse, and to maintain a Light therein".

Congress seems to have been informed of the protocol of cession only by a letter dated January 9, 1851, from the Fifth Auditor of the Treasury, Stephen Pleasonton, to the Chairman of the Committee of Commerce of the House of Representatives, Robert M. McLane, of Maryland, in these terms (Department of Commerce, Bureau of Lighthouses, 29 Lighthouse Letters, January 25, 1850–February 18, 1851, p. 635):

I have just received a copy of a Protocol entered into at London on the 9th of December last, by the Hon. Abbott Lawrence, Envoy Extraordinary and Minister Plenipotentiary of the United States, and Lord Palmerston Secretary of State for Foreign Affairs, in which it is agreed by the latter that the British Government would cede such part of the Horse Shoe Reef, in Niagara River as may be necessary, for the purpose of erecting a Light House thereon, on the condition "that the Government of the United States will engage to erect such Light House, and to maintain a Light therein, and that no fortification be erected on the said Reef", to which condition Mr. Lawrence assented on the part of the United States.

The obstacle to the erection of a Light House at the place, which existed heretofore, and for which an appropriation of 20,000 dollars was made, being thus removed, I have the honor to recommend a further appropriation of 25,000 dollars to enable me to proceed with the work, agreeably to a plan and estimate prepared by Isaac Smith Esq an Engineer of great eminence, at Buffalo, New York. A copy of the estimate, shewing the whole cost of the Light House to be 45,000 dollars, is herewith enclosed, for the information of the committee.

It is proper to mention that soon after the above appropriation was made, Commander Bigelow, was detailed by the Navy Department, upon the request of this office, to examine the site and report his opinion upon the expediency or otherwise of erecting this Light, and his opinion being favorable, he obtained and transmitted with his report the estimate for building it, which is now transmitted.

The additional appropriation of $25,000 so recommended was duly made (9 Statutes at Large, 627–29, March 3, 1851; see also 10 *ibid.*,

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343, August 3, 1854); and a contract for the construction, dated November 18, 1851, was entered into with Isaac S. Smith [1] (Department of Commerce, Bureau of Lighthouses, Lighthouse Deeds and Contracts, vol. I, 1850–53); but this was annulled by the Secretary of the Treasury on May 8, 1854 (see House Report No. 43, 33d Congress, 2d session, serial 808; No. 75, 34th Congress, 3d session, serial 912; No. 108, 35th Congress, 1st session, serial 964; No. 12, 36th Congress, 1st session, serial 1067; and the act of June 25, 1860, 12 Statutes at Large, 871). The work was then carried on by the Government and completed in 1856; the lighthouse which was erected still stands, but the light has not been used since 1919; it was not considered essential after the establishment of Buffalo Intake Crib Light and other changes in aids to navigation, including completion of the Black Rock Harbor Channel, which diverted most of the traffic using the main channel at the head of the Niagara River.

The Boundary near Horseshoe Reef

The international boundary through the Great Lakes was described in Article 2 of the Definitive Treaty of Peace of 1783 (Document 11); it ran from the St. Lawrence River through the middle of Lake Ontario "until it strikes the Communication by Water between that Lake & Lake Erie; Thence along the middle of said Communication into Lake Erie; through the middle of said Lake, until it arrives at the Water Communication between that Lake & Lake Huron", etc.; but no agreement for surveying or charting that line was made prior to the Treaty of Ghent (Document 33). The Commissioners appointed under Article 6 of that treaty to "designate" the water boundary in the St. Lawrence River and thence to and through Lake Huron accompanied their report of June 18, 1822 (Document 42), with twenty-five maps on which the line was drawn; those maps are described, with citations of reproductions thereof, in the notes to Document 42; the only two of those maps showing the boundary near Horseshoe Reef are maps 16 and 17 (reproductions of which, somewhat reduced, are in Moore, International Arbitrations, VI); map 17 (unsigned) represents Lake Erie in its entirety on a scale of 1 inch to 3 geographical miles (1 : 219,000); of more importance here is map 16, entitled "Niagara 1819" and numbered IV; that map was based on an official survey of 1819 and shows the line in the northern end of Lake Erie and in part of the Niagara River. It is on a scale of 5 inches to 1 geographical mile (1 : 14,600). It was map 16 (perhaps also map 17) which was examined by Major Graham

[1] The plans of Smith were extraordinary and unique; they called for a perpendicular supporting shaft, 47 feet in height, which for 12 feet was to rest embedded in the rock of the reef; at its base and for 23 feet upward the shaft was 5 feet square, and from that height of 23 feet, or 4 feet above "smooth water" (7 feet in depth), the sides of the shaft shaped inward, so that it became no more than two feet square at the top; perched above this shaft, with the support of braces of 1½ inch "round iron", was the structure proper (the keeper's room, etc.), a structure some 17 feet across and 8 feet high, octagonal in shape and with a walk around; above this were the lamps, 38 feet above water and 57 feet above the base of the shaft.

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in 1849 and which was accordingly the basis for the finding that Horseshoe Reef was within the jurisdiction of Great Britain (see the letter of Pleasonton dated July 28, 1849, and his report of December 29, 1849, both quoted above).

The site chosen for the lighthouse at Horseshoe Reef was at the southwest of that portion of the sunken ledges of rock which is known as Middle Reef; the site was thought at the time to be "about two hundred feet on the British side of the boundary line" as shown on the charts with the report of 1822 (letter of Pleasonton dated July 28, 1849); it now appears that this was an underestimate; the line of 1822 (the official line in 1850) was approximately 1,150 feet east of the site; the position of the lighthouse is now accurately fixed at latitude 42°52′52″.403 north and longitude 78°54′55″.264 west (from the Report of the International Waterways Commission upon the International Boundary between the Dominion of Canada and the United States through the St. Lawrence River and Great Lakes, 177, with slight plus corrections to accord with the North American datum, 1927; the corrections were supplied by Mr. Thomas Riggs, United States Commissioner of the International Boundary Commission).

The extent of the cession was very limited; according to the report of Commander Bigelow, the area of the entire reef was about three acres; but the words of the protocol are "such portion of the Horseshoe Reef as may be found requisite for the intended Lighthouse"; this was an enclave of only a fraction of an acre of land under water. According to the contract of 1851, the rock was "about seven feet below the surface of Lake Erie"; the "records show that the old Horseshoe Reef Lighthouse has an oak crib 40 feet x 40 feet in plan, the top of which is about 3 feet above the present water level. This crib was filled with large flat rubble and on top of this was built a solid stone pier 14 feet high 38 feet x 38 feet in plan. A wood building supported on four massive iron columns was constructed above this solid stone pier" (letter of Mr. Roscoe House, Superintendent of Lighthouses, Tenth District, dated Buffalo, March 5, 1936). The lighthouse, a "square 1-story tower on masonry pier", is 44 feet high (Light List, Great Lakes, United States and Canada, 1929, 218). A photograph of Horseshoe Reef Lighthouse, taken in July 1915 from a distance of a quarter of a mile, looking north by east, is reproduced facing page 906 (Department of Commerce, Bureau of Lighthouses, Office of the Chief Engineer).

All uncertainty as to the boundary in the vicinity of Horseshoe Reef was ended by the treaty with Great Britain signed at Washington April 11, 1908, and the proceedings had thereunder. Pursuant to Article 4 of that treaty, the line in the St. Lawrence River and the Great Lakes was reestablished by the International Waterways Commission "with such deviation from said line, however, as may be required on account of the cession by Great Britain to the United States of the portion of Horse Shoe Reef in the Niagara River necessary for the light-house erected there by the United States in accordance with the terms of the protocol of a conference held at the British Foreign Office December 9, 1850, between the representatives of the two Governments and signed by them agreeing upon such cession";

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and it was also agreed that wherever the boundary was shown in the earlier charts "by a curved line along the water the Commissioners are authorized in their discretion to adopt, in place of such curved line, a series of connecting straight lines defined by distances and courses and following generally the course of such curved line". Sheet No. 12, Niagara River, of the charts adopted August 15, 1913, by the International Waterways Commission, shows the boundary in straight-line courses from the Niagara River into Lake Erie, with the "deviation" necessary to leave Horseshoe Reef Light east of the line, which at turning point 153 is one hundred feet due west of that light (see Report of the International Waterways Commission, 65–66, 105–6, 174–77).

The Maps

By Samuel Whittemore Boggs, Geographer of the Department of State

The map facing this page has been prepared to show the position of Horseshoe Reef, and the position at which the lighthouse was built, in relation to the international boundary existing prior to the protocol of December 9, 1850.

The boundary at the head of the Niagara River and the lower end of Lake Erie was shown on map 16 accompanying the report of the Commissioners under Articles 6 and 7 of the Treaty of Ghent. Notes on the originals of the twenty-five maps which accompanied that report are in volume 3 of this edition at pages 71–72.

Map 16 bears the title "N° IV Niagara 1819". The certificate thereon, signed by the Commissioners and surveyors, reads as follows: "We certify this to be a true Map of part of the Boundary designated by the sixth article of the Treaty of Ghent; from actual Survey by order of the Board."

The original of map 16 in the archives of the Department of State is a manuscript map 22⅝ inches high by 35 inches wide (57.5 by 88.5 cm). In the orientation of the map, west is at the top. Two graphic scales are shown, one in terms of a "Geographical Mile—of 6075.6 feet" and the other in terms of an "English Mile—of 5280 feet"; the two scales differ from one another only by a fraction of 1 percent; the scale expressed as a representative fraction, based on the average of the graphic scales, is approximately 1:14,630. There are no indications of latitude and longitude. A long arrow is shown, to represent north, but it does not indicate whether it is true or magnetic north. There is a considerable network of triangulation lines, sufficient as a basis for an accurate map.

The international boundary is shown on map 16 as a continuous black line; on the American side it is shaded with blue and on the British side with red.

In the preparation of the map facing this page, map 16 has been compared with the following chart:

U.S. Lake Survey. Buffalo harbor, New York. War department, Corps of engineers. Survey of the northern and northwestern lakes. Issued November 1933. [Corrections to] November 8, 1935. [Detroit, Mich., Lake survey office, 1935.]

Scale 1:15,000. 90 by 74½ cm (35.5 by 29.4 inches). Catalogue No. 314.

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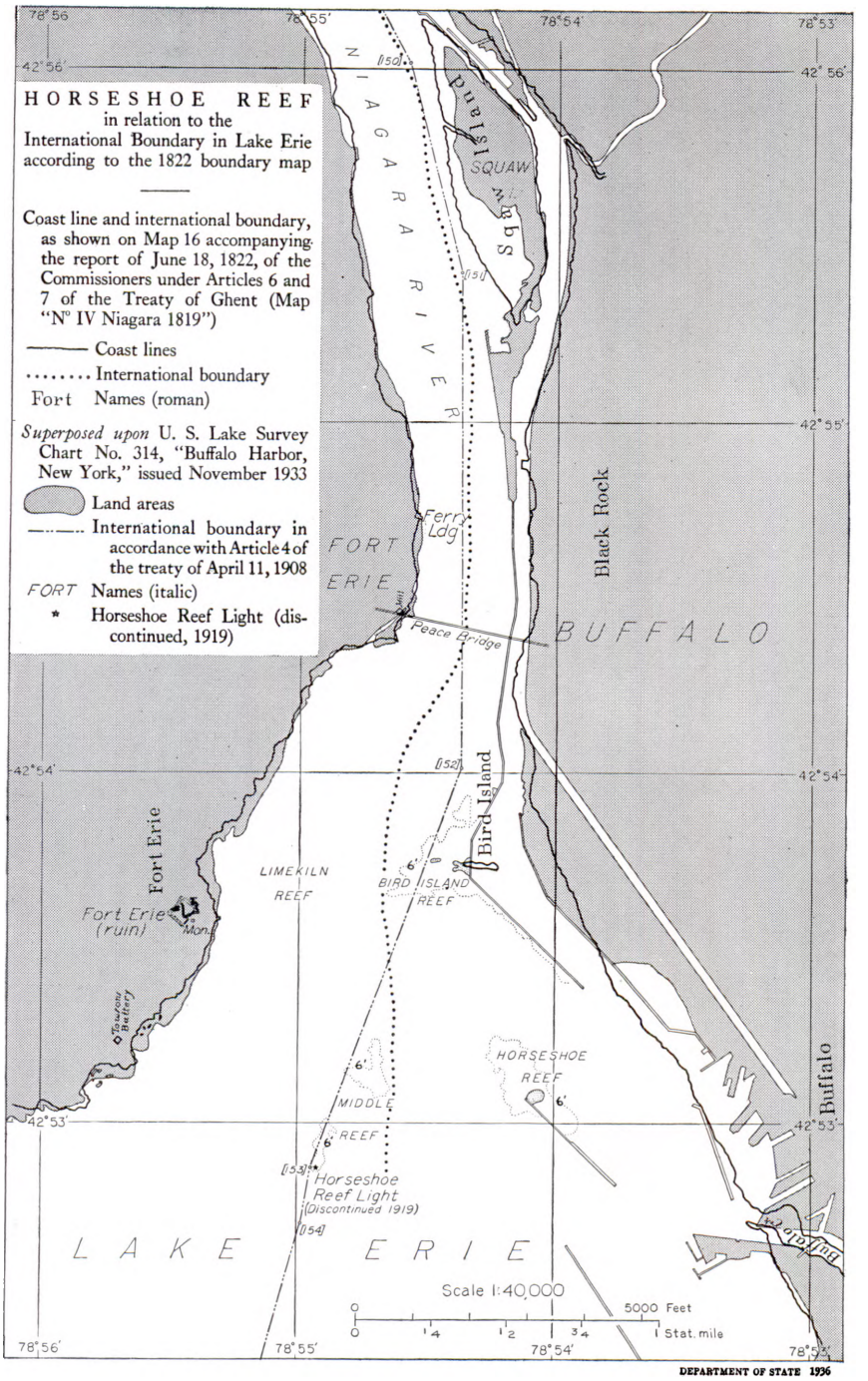

DEPARTMENT OF STATE 1936

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HORSESHOE REEF LIGHTHOUSE

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This chart is hereinafter generally referred to as the 1933 Lake Survey Chart. Therefrom have been traced the modern shore lines (in fine lines), the reefs and the position at which the Horseshoe Reef Lighthouse was erected, the parallels and meridians, the graphic scales, and the present international boundary as ascertained and reestablished in accordance with Article 4 of the treaty of April 11, 1908. The numbers of the boundary turning points have been added in brackets. Names copied from the 1933 Lake Survey Chart are shown in light-line italics; the land areas are shaded.

In superposing the 1822 map upon the 1933 chart, a copy of the former was photographically made at the scale of the latter (1 : 15,000). Fort Erie and the adjacent Canadian coast and the shores of Squaw Island were superposed as well as possible; thus oriented, the agreement at many points is close (for example, the shore line at the unnamed building approximately at the position of the present ferry landing opposite Black Rock); and it was found that the north arrow on the 1822 map coincides almost exactly with true north on the 1933 chart.

The essential details of the 1822 map were then traced (that is, the southern three fifths of the map), the shores in heavy lines, the boundary in a dotted line (the line extends, fortunately, a little farther south than the position of the Horseshoe Reef Light); and the lettering was copied in the style, position, and orientation of the original (see, for example, "Sqaw Island").

The boundary line of the 1822 map, it will be seen, passes well to the east of the position at which the Horseshoe Reef Lighthouse was erected, that point being then in Canadian waters at a distance of approximately 1,200 feet from the nearest point of the international boundary.

THE MAP OF 1839–40

This map is an original drawing on file in the War Department. The title, etc., in the lower left corner of the map, read as follows:

Map of a survey of the outlet of Lake Erie and head of the Niagara River including Buffalo and Black Rock Harbors; made under the direction of Capt W. G. Williams, U.S. Topogl Engrs by Lieuts J. H. Simpson and J. C. Woodruff, J. F. Peter and H. Lovejoy, Asstes. 1839–40.
Scale 1 : 6,000 (500 feet=1 inch). 198 by 233 cm (78 by 92 inches).

Some distance to the right of the title box is the notation: "Drawn by J. Edmd Blake, 1st Lieut Topogl Engrs J. C. Woodruff, 2nd Lieut Topogl Engrs, J. F. Peter, Asst."

In the lower left corner is a stamped impression: "U.S. War Department. Bureau of Topographical Engineers." In the lower right corner is the signature: "W. G. Williams Capt. U.S. Topl Engrs."

The map is on the "scale of 500 feet to one inch" (1:6,000); comparison with the 1933 Lake Survey Chart shows that the map is constructed almost exactly at that scale. In size the 1839–40 map is approximately 78 inches high by 92 inches wide (198 by 233 cm). The drawing is made on six sheets of heavy drafting paper, which have been mounted on cloth as a continuous map. Neither latitude

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nor longitude is shown on the map. A long arrow is drawn, with an ornate design at the north end; it bears the notation "magnetic meridian"; the magnetic declination at Buffalo in 1839 was approximately 1°15′ west. On the basis of a careful comparison with the 1933 Lake Survey Chart, it is found that the arrow indicates true north, not magnetic north. The map is somewhat exceptionally oriented, southwest being at the top of the map.

Triangulation lines are drawn in yellow- or orange-colored ink; many of the triangulation points may be identified on the most recent large-scale maps and thus afford a check of the accuracy of the 1839–40 survey. Compared with the 1933 Lake Survey Chart, it is found that the surveying and mapping of the 1839–40 map were done very accurately; the triangulation points which can be identified, as well as street corners, the Erie Canal, and considerable portions of the shore lines, are in close accord.

Several reefs are shown, by means of contour lines at 6-foot intervals, at the outlet of Lake Erie; those named are "Horse shoe Reef", in the position of the reef of the same name on the 1933 Lake Survey Chart (see the map facing p. 920), and "Reef of Rocks", in the area which embraces "Middle Reef" of the 1933 chart and which includes the position at which the Horseshoe Reef Lighthouse was built. The delineation of the reefs is not altogether accurate; the soundings shown on the map afford an insufficient basis for the plotting of the submarine contour lines shown.

This 1839–40 map is important in a study of the maps which are next described. It was apparently utilized in the construction of the 1849 chart; and it is referred to in the note on the 1854 chart.

CHART OF HORSESHOE REEF, 1849

This is the chart of Horseshoe Reef which is referred to in the report of Commander Bigelow of May 28, 1849 (quoted above), in which he says: "I forward herewith a Chart, shewing the position of the Reef [Horseshoe Reef], on which is marked the Location I would recommend for the Pier and Light House." The "original chart", it will be recalled, accompanied the note of Abbott Lawrence to Viscount Palmerston of January 26, 1850, having been sent to the Secretary of State with the letter of the First Comptroller of the Treasury of December 28, 1849, and transmitted to Lawrence with the instruction of the next day. It is now on file in the Foreign Office.

The following notes are based on a study of a negative photostat copy received from London with despatch No. 1919, of January 21, 1936 (D.S., File 026 Treaties/1859).

In the lower part of the chart the title, etc., appear: "Horseshoe Reef Head of the Niagara River Scale of 100 Feet to an Inch May 1849". There is nothing on the chart to show by whom, or under whose direction, the chart was made, or where it was made.

In the lower left corner there is an inset of the lower end of Lake Erie and the head of the Niagara River.

A notation on the verso shows through on the face of the original and may be read: "8. Inclosure in Mr Lawrence's Note of Jan: 28/50".

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The negative photostat copy is in four sheets; when fitted together, the size is 109 cm high by 71.5 cm wide (43 by 28¼ inches). As the graphic scale of the main map is nearly 1 inch to 100 feet, this is apparently very nearly the size of the original drawing. The original map has been folded into sixteen sections, approximately to the dimensions of the paper on which diplomatic notes are written; in opening it out to make the photostat copy, some of the sections have been partially doubled under others, resulting in both angular and linear anomalies which add considerably to the difficulties in analyzing the chart.

The *main map* bears lines of soundings on Horseshoe Reef, ranging from 2 feet 6 inches to 10 feet in depth. The exterior line of soundings on the reef shows depths ranging from 6 to 10 feet; it is therefore not a submarine contour, but it approximates the outline of the reef at an average depth of about 8 feet. To the south and west of the lines of soundings on the reef, there is shown a light dotted line which passes through transverse lines of soundings at the 12-foot or 2-fathom submarine contour; this contour line does not agree with the corresponding 12-foot contour on the 1933 chart published by the United States Lake Survey.

From both the north and the south ends of the reef, lines are run toward five points on the Canadian and American shores, and on those ten lines are shown the names of the features and corresponding compass directions. An arrow appears on the chart, without any notation, but obviously to indicate north (either true or magnetic). The arrow indicating north is turned at an angle of approximately 33° to the right (clockwise) of the vertical or longitudinal direction of the chart. No latitude or longitude is indicated anywhere on the chart. A very short portion of the shore of Canada appears at the top of the chart, which ties the survey of the reef to the mainland. No part of the American shore is drawn on the main map.

At the south end of the reef, a V-shaped or sector-shaped figure is shown, about 160 feet long according to the scale, the acute angle of the figure facing directly against the current, the course of which is indicated by a short feathered arrow immediately to the right. Within the sector-shaped figure is a small circle, about 200 feet from the south end of the reef; this appears to be the point on which the lighthouse was subsequently built, or approximately so; Commander Bigelow states in his report, quoted above, that on the chart "is marked the Location I would recommend for the . . . Light House", and it seems to be the only point on the chart to which that statement is applicable; furthermore, it agrees with the distance from the south end of the reef on the 1933 Lake Survey Chart.

Between the reef and the Canadian shore two similar sector-shaped figures are drawn on larger scale and show interior detail; they appear to be alternative plans for a crib or other structure on the reef, one with a large sector-shaped masonry foundation surrounded by loose rock within an outer wall, the other a small square structure surrounded by loose rock within an outer wall.

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The *inset map* shows both American and Canadian shores, but very few individual features by which it may be compared satisfactorily with other maps and charts. There is no direction arrow, and there are no means of orienting the inset in relation to the main chart except by means of the relationships of Fort Erie and the two ends of the reef, as they appear on the main map and the inset; the orientation of the inset as thus determined is at an angle of nearly 45°, rotated to the left, or counterclockwise, in relation to the main map.

The outline of the exterior line of soundings which appear on the main map is represented on the inset by a dotted line; but it should be noted that this is not a submarine contour line, the soundings, as indicated above, varying from 6 to 10 feet; within the dotted line appears "Horse shoe Reef". On the inset are shown three lines of soundings, extending into the Niagara River to Black Rock Harbor (as named on the 1839–40 map), now part of Buffalo; they do not touch the reef and do not duplicate lines of soundings on the main map. A line of soundings on the main map extends into the inset, that is, beyond the inset border, crossing the land area south of Buffalo Creek, not sketched in on the inset; this fact suggests that the inset (or at least a part of the American shore) was an afterthought and that it was added after the main map was drawn and without removing the irrelevant soundings within the inset.

A line, consisting of dashes and dots, is shown on the inset, in the river and the lake, and bears the notation "Boundary Line of U. States"; it passes well to the east of "Horse shoe Reef".

Scales.—The main chart indicates that it is made on the "Scale of 100 Feet to an Inch" (1:1,200) and bears a graphic scale with divisions approximately equal to an inch and numerals indicating 100 feet for each inch. The reef apparently measures 10.9 inches between survey points at the north and south ends, thereby indicating a length of approximately 1,090 feet. (The report of Commander Bigelow, May 28, 1849, states: "It is 1087 feet long within a line of Soundings of 8 to 9 feet".) This appears to correspond with recent surveys, measuring between points of similar soundings.

The scale of the inset map is not indicated except by a graphic scale approximately in 1-inch divisions, with no notation. The reef, however, measures approximately 1.09 inches or one tenth the length on the main map. The scale is apparently, therefore, 1,000 feet to 1 inch (1:12,000). The distance between the reef and Fort Erie also bears approximately the same ratio of 10:1 on the two maps (namely, approximately 31.5 inches and 3.15 inches, respectively, from Fort Erie to the north end of the reef).

Comparison with other maps and charts.—The soundings (main map) within 10-foot depths on the reef, by comparison with recent charts, appear to be accurate and presumably served the purpose of the survey, namely, determining the site of the lighthouse to be built on Horseshoe Reef. But the 1849 chart is surprisingly inaccurate in that the reef is too near to the Canadian shore and too far from the international boundary line and that the American and Canadian shores

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are not at the correct distance apart and do not appear to have a proper relationship otherwise.

The inaccuracies of the 1849 chart are pertinent here, as they seem to afford an explanation of the statement of Stephen Pleasonton, Fifth Auditor of the Treasury, in his letter of July 28, 1849, to Martin B. Scott, to the effect that, in company with Major Graham, he had examined "the map . . . in the Department of State" (map 16 accompanying the report of the Commissioners under Articles 6 and 7 of the Treaty of Ghent) and had found the reef to be about 200 feet on the British side of the boundary; and, as is shown on the map facing page 920, the distance between the position of the Horseshoe Reef Lighthouse and the international boundary of the 1822 map was about 1,200 feet, certainly much more than 200 feet.

Examination of the 1849 chart shows that the main chart and the inset essentially agree in the details that are common to both, namely, the reef and the Canadian shore line near Fort Erie. The two therefore supplement each other in making comparisons with other maps.

There is nothing to show what maps or charts were utilized, and how they were used, in sketching the shore lines and the boundary; no map has been found on which the shore lines and the boundary line are in agreement with the inset on the 1849 chart. Two official maps should have been utilized, namely, the 1839–40 map made by the United States Topographical Engineers, for land features, and the 1822 boundary map, No. 16, for the international boundary. The evidence suggests that both maps were used, but inaccurately and in an exceptional manner; and there is nothing to indicate that any other maps were used.

In making a comparison of the 1849 chart with other maps, there are three features which are common to both main map and inset that may be used for orientation: (*a*) the point at which the lighthouse was subsequently erected (supposed to be the small circle within the sector-shaped figure near the south end of the reef, as explained above); (*b*) the direction from that point to Fort Erie; and (*c*) the trend of the reef. From a comparison with other maps, it appears that the arrow on the main map represents true north rather than magnetic north.

The main map indicates the direction, from both ends of the reef, toward each of the following five points: (*a*) Fort Erie; (*b*) "Red Mill Canada"; (*c*) "Cupola of American Hotel Buffalo City"; (*d*) "First Presbyterian Church Buffalo City"; and (*e*) "Light House Buffalo Creek". All of these except "Red Mill" are shown on the 1839–40 Topographical Engineers map; and as the corresponding triangulation points of the earlier map may be identified on the 1933 Lake Survey Chart, it is possible to make a critical study of the accuracy of the 1849 inset. The fact that four of the triangulation points that constitute a part of the triangulation net of the 1839–40 map have been used on this chart is one of the best evidences of the employment of that earlier map. "Red Mill Canada" has not been found on any map, but map 16 of the 1822 Commission report shows a "Mill" on the Canadian shore at a point which agrees very closely with one

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of the two bearings on "Red Mill" which are indicated on the 1849 chart (the mill of the 1822 map is shown on the map facing p. 920, near the Canadian end of the recently built "Peace Bridge"); on the 1849 inset an unnamed building is shown in the same position, directly opposite the "Beacon Light", Buffalo.

If the bearings of each of the five points on shore which are named above are plotted on a modern map, the intersection of the lines drawn from the two ends of the reef fall well short of the points on land to which they refer, except in the case of Fort Erie. The recorded bearing from the south end of the reef to Fort Erie, N. 25° 18′ W., is approximately correct, and the plotted line is in agreement. The line which is plotted from the north end of the reef to Fort Erie, however, bears about six degrees farther to the west than the direction which is stated thereon in degrees and minutes, being plotted about N. 39° 50′ W.; the bearing on the line reads N. 33° 45′ W. This plotted line passes through Fort Erie at the position which is shown for the fort on the 1849 chart; the difference between the plotted line and the recorded bearing is necessitated, at least in part, by the fact that the distance between the reef and Fort Erie is about 1,200 feet too small.

Assuming the scale of the inset to be 1:12,000, not only is the distance to Fort Erie from both ends of the reef approximately 1,200 feet too small, but Red Mill, also on the Canadian shore, is at least 1,100 feet too close. The distance to the light at Buffalo Creek is also somewhat small, but by a difference of only 300 to 450 feet.

These inaccuracies of the 1849 chart, in the representation of the lake and river shore lines and of the relation of Horseshoe Reef thereto, have not been satisfactorily accounted for. In order to show the position of the reef with reference to the land, it was necessary to sketch in at least a portion of the nearest shore, namely that near Fort Erie, and this was done on the main map. And an inset was necessary, on which to indicate the three lines of soundings not on the reef, two of which led to Black Rock Harbor (Commander Bigelow recommended the erection of a "Beacon Light" on Black Rock Pier, as being "essential to render the main Light of any Protectional use"); on the inset it would therefore be almost necessary to sketch portions of both the American and the Canadian shore. The 1839–40 Topographical Engineers map was presumably available for the purpose; it was on a large scale; on it an arrow indicated true north, but was mistakenly labeled "Magnetic meridian"; and while accurate in mapping land features, it was inaccurate in the delineation of the reefs. The "Horse shoe Reef" of the 1849 chart is part of a much larger "Reef of Rocks" of the 1839–40 map; it would not be surprising if the position of the reef that was surveyed in 1849 with considerable accuracy were incorrectly identified on the 1839–40 map in relation to the shore lines.

But it is difficult to understand how the Canadian shore line came to be placed nearly 1,000 feet too near the reef, on both the main chart and the inset. The shore need not have been shown at all on the main chart (although it would be highly desirable to show a

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portion), if there were to be an inset. Supposing it were decided to sketch the shore on the main chart, possibly the tracing paper was found not large enough, and the distance may have been foreshortened; the paper was about 43 inches in its longest dimension, sufficient to show less than 1,000 feet of unidentified Canadian shore in its true position; and it would have required as much as 10 inches more paper to show Fort Erie (the only feature in addition to the shore line) in its proper relation to the reef. Or perhaps there was a misinterpretation of the statement of Commander Bigelow that "the Horse shoe Reef is situated . . . at the distance of three fourths of a mile from the Canada shore"; that statement is true of the *nearest* point on the Canadian shore, but it may have been mistakenly assumed to refer to the fort at Fort Erie.

Whatever the explanation of the inaccuracy, on both the main chart and the inset the Canadian shore is too near the reef; but the American shore appears to be more correctly represented in relation to the reef.

In sketching the "Boundary Line of U. States" on the inset map, use seems to have been made of the 1822 boundary map No. 16. No other map has been found, which antedates 1849 and on which the international boundary is shown, which is sufficiently large in scale or adequate in detail to have been used in tracing the boundary on the 1849 inset. In any case, the boundary on the 1849 inset agrees quite closely with that on the 1822 map, if it be plotted intermediate between the two shores in a certain manner.

When Pleasonton visited the Department of State in 1849, in company with Major Graham, to determine whether the point at which it was proposed to erect the Horseshoe Reef Lighthouse was on the American or the Canadian side of the boundary, he probably had with him the 1849 chart; and he may have verified the position of the "Boundary Line of U. States" on the inset merely by comparison with the 1822 boundary map. The close similarity of the lines, allowing for the difference in scale of the two, might well have satisfied him as to the general accuracy of the boundary drawn on the 1849 chart.

It may be supposed, then, that Pleasonton thought that the Horseshoe Reef was correctly shown in relation to the boundary line on the 1849 inset, and therefore in Canadian waters. Measuring the distance on the inset, it would be found to be about 2 inches (about 2,000 feet, if the scale has been correctly computed, as explained above); but, finding no notation on the simple graphic scale that appears on the inset, it is not unreasonable to suppose that Pleasonton turned to the main map, where there is a similar graphic scale, above which appears the line "Scale of 100 Feet to an Inch"; on that scale the 2 inches would read 200 feet. This is perhaps the most plausible explanation of the statement that the reef was 200 feet from the boundary line, in Canadian waters.

CHART OF HORSESHOE REEF, 1854

This chart is an original drawing on tracing paper, yellowish in color, mounted on cloth, on file in the Bureau of Lighthouses, Depart-

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ment of Commerce. The title and filing notation read: "Horse Shoe Reef L.H. 10th Dist. 1 H. filed 26 June, '54."

A handwritten note in the lower left corner reads:

> The reef, on which the L[t] House under construction stands, is more correctly delineated on this sketch than on the map in the Bureau of Top[l] Engr. Capt. Williams survey in 1839. The lines of soundings did not embrace the entire reef. The general purpose which Capt. Williams map was intended to subserve did not require so minute a survey of that locality. J. C. Woodruff Buffalo M [?] . . . 1854 Capt. Top[l] Engrs.

At the site of the Horseshoe Reef Light is the note: "L[t] House under construction by Isaac S. Smith, 1852 & 1853." On the verso of the original tracing paper (before it was cloth-backed), the following handwritten notations appear:

> Sketch showing position of Horse Shoe Reef L.H. commenced by Isaac S. Smith.
>
> Capt. WOODRUFF.
>
> Black Rock L.H. Lake Erie 10th Dist.

Portions of the drawing have been lost and were replaced with white paper when the drawing was cloth-backed. The title and some of the notations are lettered on the white paper; they have therefore been added since the map was mounted.

The original drawing measures approximately 17.9 inches high by 27.1 inches wide (46.5 by 69 cm). No scale is indicated on the chart in any manner whatever, and no linear distances are shown. It is, however, on the same scale as the 1839–40 map made by the United States Topographical Engineers and described above; the scale is therefore 1 : 6,000. The Lieutenant J. C. Woodruff, surveyor and draftsman of the earlier map, is the Captain Woodruff who signed the note on this chart in which reference is made to the 1839–40 map.

Two meridian lines are shown on the drawing, intersecting at an angle representing the magnetic declination. The left of these two lines bears the notation "Magnetic Var. 2°0′15″ W. July 1847". The line that is evidently intended to represent true north does actually represent true north.

Comparison of the 1854 chart with the 1839–40 map shows that the angles and map distances between points on the Buffalo shore and Fort Erie are closely in agreement, but the Canadian shore line differs appreciably. The American shore lines coincide almost exactly, except for two small stretches, where, apparently, changes had been observed.

The note written on the 1854 chart implies that it was made to correct the inaccuracies on the 1839–40 map in the delineation of the reefs. Comparison shows that a new hydrographic survey was justified, for the differences from the 1839–40 map are considerable; the point at which the Horseshoe Reef Lighthouse was erected, for example, appears between the 12- and 15-foot contours on the 1839–40 map, whereas by the 1854 chart the depth of the water at that point is less than nine feet.

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Treaty Series No. 290
10 Statutes at Large, 911–14
18 *ibid.*, pt. 2, Public Treaties, 639–40

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PORTUGAL : FEBRUARY 26, 1851

Convention for the Settlement of Certain Claims, signed at Washington February 26, 1851. Original in Portuguese and English. Submitted to the Senate February 27, 1851. (Message of February 26, 1851.) Resolution of advice and consent March 7, 1851. Ratified by the United States March 10, 1851. Ratified by Portugal June 17, 1851. Ratifications exchanged at Lisbon June 23, 1851. Proclaimed September 1, 1851.

Havendo os Estados Unidos da America, e Sua Magestade Fidelissima, A Rainha de Portugal e dos Algarves, igualmente animados do dezejo de mantérem a harmonia e relaçoens de bôa amizade, que sempre tem existido e tanto convem conservar entre as duas Potencias, Deliberado terminar por uma Convençâo as questoens pendentes entre os dois Governos, relativas a certas reclamaçoens pecuniarias de Cidadãos Americanos, apresentadas pelo Governo dos Estados Unidos, contra o Governo Portugues, Nomeáram Seus Plenipotenciarios para esse fim, a saber:

O Presidente dos Estados Unidos da America, a Daniel Webster, Secretario de Estado dos ditos Estados Unidos, e Sua Magestade Fidelissima, a Joaquim César de Figanière e Morão, do Seu Consêlho, Commendador da Ordem de Christo, e da de

The United States of America, and Her Most Faithful Majesty, the Queen of Portugal and of the Algarves, equally animated with the desire to maintain the relations of harmony and amity, which have ålways existed, and which it is desirable to preserve between the two Powers, having agreed to terminate, by a Convention, the pending questions between their respective Governments, in relation to certain pecuniary claims of American citizens, presented by the Government of the United States, against the Government of Portugal,—have appointed as their Plenipotentiaries for that purpose, to wit:

The President of the United States of America, Daniel Webster, Secretary of State of said United States,—and

Her Most Faithful Majesty, J. C. de Figanière é Morâo, of Her Council, Knight Commander of the orders of Christ, and of

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N.S. da Conceição de Villa Viçoza, e Ministro Residente de Portugal nos Estados Unidos,—

os quáes, depois de terem trócado os seus Plenos Poderes, que foram achados em bôa e devida forma, ajustáram e concluíram os artigos seguintes:

ARTIGO I.

Sua Magestade Fidelissima, A Rainha de Portugal e dos Algarves, Reconhecendo a difficuldade de se entenderem os dois Governos sobre o assumpto de aquellas reclamaçoens—pelas opinioens divergentes, que cada um conserva—difficuldade que podia pôr em risco a bôa intelligencia e harmonia existentes entre elles, e, Determinada a conservar uma e outra, Annuio a pagar ao Governo dos Estados Unidos, uma somma equivalente ás indemnidades pedidas para diversos Cidadãos Americanos (com a excepção da que he mencionada no artigo quarto): a qual somma o Governo dos Estados Unidos se obriga a receber como compensação plena das ditas reclamaçoens, com a excepçâo acima referida, e a distribuí—la pelos reclamantes.

ARTIGO II.

Não podendo as Altas Partes Contractantes Concordar na questâo de Direito Publico, relativa ao caso do Corsario Brigue Americano "General Armstrong", de-

O. L. of Conception of Villa-Viçoza, and Minister Resident of Portugal near the Government of the United States,—

who, after having exchanged their respective full powers, found to be in due and proper form, have agreed upon, and concluded, the following articles:

ARTICLE I.

Her Most Faithful Majesty, the Queen of Portugal and of the Algarves, appreciating the difficulty of the two Governments' agreeing upon the subject of said claims, from the difference of opinion entertained by them respectively, which difficulty might hazard the continuance of the good understanding, now prevailing between them, and resolved to maintain the same unimpaired,—has assented to pay to the Government of the United States, a sum equivalent to the indemnities claimed for several American citizens, (with the exception of that mentioned in the fourth Article,) and, which sum the Government of the United States undertakes to receive in full satisfaction of said claims, except as aforesaid, and to distribute the same among the claimants.

ARTICLE. II.

The high contracting parties, not being able to come to an agreement upon the question of public law involved in the case of the American Privateer Brig

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struído por Navios da Marinha Británnica nas aguas da Ilha do Faial, em Setembro de 1814, Sua Magestade Fidelissima Propóz, e os Estados Unidos da America concordáram, que fosse a reclamaçâo apresentada pelo Governo Americano, em favor do Capitam, Officiáes e Tripulaçâo do mesmo Corsario, submettida ao juizo arbitral de algum Soberano, Potentado, ou Chefe de alguma Nação amiga de Ambas As Altas Partes Contractantes.

ARTIGO III.

Lógo que tiver sido obtido o consentimento do Soberano, Potentado, ou Chefe de alguma Nação Amiga, em que tiver recahido a escôlha das Altas Partes Contractantes, para servir de Arbitro na precitada questâo do Corsario "Genl Armstrong", copias de toda a correspondencia que tem medeado, ácerca da mesma reclamaçâo, entre os dois Governos e seus respectivos Representantes, seram apresentadas ao mesmo Arbitro, a cuja decizâo as Duas Altas Partes Contractantes, desde já, se obrigam a se submettérem.

ARTIGO IV.

As indemnidades pecuniarias que Sua Magestade Fidelissima promete pagar, ou fazer pagar por todas as reclamaçoens apresentadas, antes do dia 6 de Julho de 1850, em favor de cidadãos americanos pelo Governo dos

"General Armstrong", destroyed by British vessels in the waters of the Island of Fayal, in September 1814, Her Most Faithful Majesty has proposed, and the United States of America have consented, that the claim presented by the American Government, in behalf of the captain, officers & crew of the said Privateer should be submitted to the arbitrement of a Sovereign, Potentate or Chief of some nation in amity with both the high contracting parties.

ARTICLE III.

So soon as the consent of the Sovereign, Potentate or Chief of some friendly nation, who shall be chosen by the two high contracting parties, shall have been obtained, to act as arbiter in the aforesaid case of the Privateer Brig "General Armstrong", copies of all correspondence, which has passed in reference to said claim, between the two Governments & their respective Representatives, shall be laid before the arbiter, to whose decision the two high contracting parties hereby bind themselves to submit.

ARTICLE IV.

The pecuniary indemnities, which Her Most Faithful Majesty promises to pay, or cause to be paid, for all the claims presented, previous to the 6th day of July, 1850, in behalf of American citizens, by the Government of the

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Estados Unidos, (com a excepçâo da do "General Armstrong",) ficam fixadas na somma de noventa um mil setecentos vinte e sete Dollars, na forma da correspondencia entre os dois Governos.

United States, (with the exception of that of the "General Armstrong",) are fixed at ninety one thousand, seven hundred & twenty seven Dollars, in accordance with the correspondence between the two Governments.

ARTIGO V.

O pagamente da somma estipulada no artigo precedente, será feito em Lisbôa, em dez prestaçoens iguáes, no decurso de cinco annos, ao Agente dos Estados Unidos devidamente authorisado. A primeira prestação de nove mil, cento setenta e dois Dollars, e setenta centavos, com os juros adiante mencionados, (ou seu equivalente em moeda corrente Portuguesa) será satisfeita, da forma que fica declarada, no dia 30 de Setembro do anno corrente de 1851, ou antes, se o Governo Portugues o tenha por conveniente, e, no fim de cada seis meses subsequentes, o pagamento de igual prestação será feito, ficando assim, no dia 30 de Setembro de 1856, ou antes, satisfeita a somma integral de noventa um mil, setecentos, vinte e sete Dollars, ou o seu equivalente.

ARTICLE V.

The payment of the sum stipulated in the preceding Article, shall be made in Lisbon, in ten equal instalments, in the course of five years, to the properly authorised agent of the United States. The first instalment, of nine thousand, one hundred & seventy two Dollars, seventy Cents, with interest as hereinafter provided, (or its equivalent in Portuguese current money,) shall be paid, as aforesaid, on the 30th day of September, of the current year of 1851, or earlier, at the option of the Portuguese Government; and at the end of every subsequent six months, a like instalment shall be paid;—the integral sum of ninety. one thousand, seven hundred & twenty seven Dollars,—or its equivalent, thus to be satisfied on or before the thirtieth day of September, 1856.

ARTIGO. VI.

Fica estipulado que se addicionará ao pagamento de cada uma das ditas prestaçoens, o juro de seis por cento ao anno, contado desde o dia da tróca das Ratificaçoens da presente Convenção.

ARTICLE VI.

It is hereby agreed, that each and all of the said instalments are to bear, and to be paid with, an interest of six per Cent, per annum, from the date of the exchange of the ratifications of the present Convention.

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ARTIGO VII.

Esta Convenção será approvada e ratificada, e as Ratificaçoens trocadas no Cidade de Lisbõa dentro de quatro mezes depois da sua assignatura n'esta Capital, ou, mais cêdo se fôr possivel.

Em fé do que, os respectivos Plenipotenciarios assignáram a presente, e a selláram com o sello das suas Armas.

Feita, na Cidade de Washington, Districto de Columbia, aos vinte e seis dias de Fevereiro do anno do Nascimento de N.S. Jezus Christo de mil oito centos e cincuenta e um.

J: C: DE FIGANIÈRE E MORÃO
[Seal]

DAN[1] WEBSTER
[Seal]

ARTICLE VII.

This Convention shall be approved and ratified, and the ratifications shall be exchanged, in the city of Lisbon, within four months, after the date hereof, or sooner, if possible.

In testimony whereof the respective Plenipotentiaries have signed the same, & affixed thereto the seals of their arms.

Done, in the City of Washington, D.C., the twenty sixth day of February, of the year of our Lord, One thousand, eight hundred & fifty one.

DAN[l] WEBSTER
[Seal]

J: C: DE FIGANIÈRE E MORÃO
[Seal]

NOTES

On the day of the signature of this convention, the Plenipotentiary of Portugal, Joaquim César de Figanière e Morão, Minister Resident at Washington, addressed a note to the Secretary of State, Daniel Webster, referring to the agreement just signed; that note was answered two days later; the texts of those two notes follow (the former, with the translation which accompanied it, from D.S., 4 Notes from the Portuguese Legation; the latter from D.S., 6 Notes to the Portuguese Legation, 123):

[*Mr. de Figanière e Morão to Mr. Webster*]

Com referencia à Convenção que o Ministro Residente de Sua Magestade Fidelissima junto ao Governo dos Estados Unidos teve hoje a honra de ajustar e assignar com o Senhor Daniel Webster, Secretario d'Estado dos mesmos Estados, tem o abaixo assignado de ponderar ao Senhor Webster:

Que o Governo de Sua Magestade Fidelissima, consentindo em attender

[Translation]

HER MOST FAITHFUL MAJESTY'S LEGATION IN THE UNITED STATES
Washington, 26 February, 1851

In reference to the convention that the Minister Resident of Her Most Faithful Majesty near the Government of the United States of America this day had the honor to conclude with the Honorable Daniel Webster, Secretary of State of the said States, the

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às diversas reclamaçoens apresentadas pelo Governo dos Estados Unidos, ao ponto de celebrar-se para esse effeito a Convenção referida, deixon de insistir no seu direito, de serem conjunctamente examinadas e attendidas as reclamações pendentes de Subditos Portuguezes contra o Governo Americano, e até de estipular, na dita Convenção, que o pagamento das indemnidades Americanas fosse encontrado nas sommas que os Estados Unidos possão ter de pagar semilhantemente aos Subditos portuguezes; e que, consentindo o abaixo assignado, como Plenipotenciario, em ter assim ommitiede este negocio, na Convenção celebrada, se determinon principalmente pelas intenções de Seu Governo e pelas instrucçoens que lhe deu, de attender primeiro que tudo a conservação da bôa harmonia entre os dois Governos, Mas, o abaixo assignado, faltaria a seu dever, e ás instrucçoens geráes do seu Governo, que lhe ordenam de velar nos interesses de Cidadãos Portuguezes, se não lembrasse ao Senhor Secretario d'Estado dos Estados Unidos, e não mencionasse aquí, o que ficon entendido de parte a parte, nas differentes conferencias que tem havido, isto he: Que o Governo dos Estados Unidos procederá, com a brevidade possivel, ao exâme das reclamaçoens Portuguezas, e dará promptamente a decizão que o Governo de Sua Magestade Fidelissima espera, conforme com a justiça e a razão, para que assim reciba do Governo dos Estados Unidos um testemunho claro de que sam por elle partilhados os dezejos que o Governo do abaixo assignado tem sempre mostrado, de conservar relações de bôa intelligencia e amizade entre as duas Potencias.

Esperando do Senhor Secretario d'Estado dos Estados Unidos uma resposta conforme com o que fica exposto, o Ministro Residente de Portugal tem a honra de renovar lhe os protestos de sua mui distincta consideração

Legação de Sua Magestade Fidelissima em Estados Unidos da America, Washington, D.C. em [26] de Fevereiro de 1851.

J. C. de Figanière e Morão

AO Honrado Sor Daniel Webster
Secretario d'Estado dos Estados Unidos da America

undersigned begs leave to state to Mr. Webster:

That, upon consenting to attend to the sundry claims presented by the Government of the United States, to the extent of concluding the aforementioned convention, Her Most Faithful Majesty's Government waived the right to have the pending claims of Portuguese subjects against the American Government jointly examined and attended to, and even to insist upon stipulating, in said convention, that the amount of the American indemnities should be set off from that which the United States may similarly have to pay to Portuguese subjects; and that, if the undersigned consented, as Plenipotentiary, to omit inserting this matter in the convention referred to, he was led principally by the intentions of his Government and by the instructions he has received, to attend, above all, to the continuance of the good understanding between the two countries. But the undersigned would stray from the path of duty and omit to obey the general instructions of his Government, which command him to attend to the interests of Portuguese subjects, were he to fail to recall to the attention of the Honorable Secretary of State of the United States, and to state in this note, that which was mutually understood in their several conferences, to wit: That the Government of the United States will proceed, with all possible dispatch, with the examination of the Portuguese claims, and will promptly decide them, as Her Most Faithful Majesty's Government trusts, according to justice and reason, thereby giving a clear proof that the Government of the United States shares in the desire the Government of the undersigned has constantly shown, to maintain unimpaired the relations of good understanding and amity between the two powers.

Trusting that the Honorable Secretary of State of the United States will confirm, in his reply, what has been stated, the Minister Resident of Portugal has the honor again to offer him assurances of his most distinguished consideration.

J. C. de Figanière e Morão

To the Honorable Daniel Webster
Secretary of State of the United States of America

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[*Mr. Webster to Mr. de Figanière e Morão*]

DEPARTMENT OF STATE,
Washington, 28th February, 1851.

The Commander J. C. DE FIGANIÈRE É MORÂO,
& & &

The Undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note, which the Minister Resident of Portugal addressed to him, on the 26th inst.

Mr Figanière is as well aware, as is this Department, that the Portuguese claims, referred to in his note, have already been presented to the consideration of this Government, which has never yet been able to perceive their justice. Nevertheless it is true that the Undersigned did inform Mr Figanière that those claims should not be precluded by the late Convention between the two Governments, but that the Undersigned would at his earliest leisure reexamine all of them, and signify to Mr Figanière the result of the examination.

The Undersigned renews to Mr de Figanière é Morâo the assurances of his distinguished consideration.

DANIEL WEBSTER.

THE FILE PAPERS

In the signed original of this convention the Portuguese version is written on the left pages, the English on the right. In each version the United States is named first throughout, but the signatures of the Plenipotentiaries correspond in order with the language of the respective versions which they follow. Among other papers in the treaty file are the attested resolution of the Senate of March 7, the duplicate United States instrument of ratification of March 10, and the original proclamation of September 1, 1851.

The instrument of ratification on the part of Portugal includes the treaty text in both languages, the Portuguese in the left columns. In each version Her Most Faithful Majesty is named first throughout; the order of the indicated signatures is the same as in the signed original of the convention. The sealing of the instrument is of somewhat unusual form; the two binding cords ran through a double pendant wafer (now detached), impressed on both sides.

The certificate or act of the exchange of ratifications at Lisbon, dated June 23, 1851, is written in Portuguese and signed by Charles B. Haddock, Chargé d'Affaires of the United States, and Antonio Aluizio Jervis d'Atouguia, Minister and Secretary of State for Foreign Affairs of Portugal.

Also in the treaty file is a translation of a draft protocol designating as arbitrator under the convention the President of the French Republic or, in the event of his failure to accept, the King of Sweden and Norway. The date in the draft is February 1851; and one may infer that the proposal of the protocol was made by the Plenipotentiary of Portugal for signature by the Secretary of State and himself.

It appears that in this case the original full powers were exchanged. That given to the Plenipotentiary of Portugal, dated January 14, 1851, is in the treaty file. The full power given to Secretary of State Webster was dated February 24, 1851, two days before the signing of the convention and the day on which agreement as to the terms thereof was reached (D.S., 14 Instructions, Portugal, 147–48); it is in customary form (D.S., 3 Credences, 386).

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PUBLICATION OF PAPERS

It appears that this convention was not formally communicated to Congress, although reference to it was made in the annual presidential message of December 2, 1851 (Richardson, V, 119).

By resolutions of August 7, 1850, and December 17, 1851, the House of Representatives requested papers on American and Portuguese claims; these were transmitted with the report of Webster of January 27, 1852, by the presidential message of the following day, and were printed in House Executive Document No. 53, 32d Congress, 1st session, serial 641 (hereinafter cited as "House Document No. 53").

Regarding that published document, the Portuguese Minister wrote on September 23, 1852; his note was addressed to the Secretary of War, Charles M. Conrad, then Acting Secretary of State during the last illness of Daniel Webster, who died on October 24; in his note De Figanière e Morão severely strictured the omission from the publication of certain listed papers and otherwise commented in rather acid terms; the note, which seems not to have been answered, was as follows (D.S., 4 Notes from the Portuguese Legation):

H.M.F.MY'S LEGATION IN THE U.S.
New York 23d September 1852.

To the Honble Chs M. Conrad
Act. Secretary of State of the U.S.
Washington City

SIR—Among the Congressional Documents lately received at this Legation, the Executive one Nº 53 of the 1rst Session 32d Congress, could not fail to particularly attract my attention, being a Message from the President of the United States, transmitting a Report of the Secretary of State, the Honorable Daniel Webster, in reference to claims of Citizens of the United States on the Government of Portugal and of Subjects of Portugal on the Government of the United States.

This Message & the Report with the Copies & translations of the correspondence and documents thereto annexed, appear to have been transmitted in compliance with, and *were believed*—says Mr Webster in his Report—to contain *all the information* called for by a Resolution of the House of Representatives of the 7th August 1850, requesting the Prezident to communicate to that House, the amount of the several claims of the United States against Portugal, the nature of these claims, the correspondence upon the subject, both at Washington and Lisbon between the two Governments: also the amount and nature of the claims preferred by Portugal against the United States, & all the correspondence between the two Governments; and of a subsequent Resolution of the same House, passed the 17 Decr 1851, requesting the Prezident to communicate the correspondence upon which the claims of the United States against Portugal were adjusted.

Upon a careful examination of this Public Official Document, I perceive with regret the ommission of the herein after mentioned Notes which, it is presumed, were overlooked as embraced in the Resolutions referred to, and which ommission is at variance with the justice due to Portugal in this matter, and tending to mislead the opinion of Congress and of the Public, in respect to the manner and the facts which brought about the adjustment of the Claims of the American Citizens against Portugal, while it is particularly prejudicial to the pending Claims of Portuguese subjects against the United States.

I am, therefore, under the necessity, as the Representative of Portugal, respectfully to request you will be pleased to lay this communication before His Excellency the Prezident of the United States, in order to draw his attention to the ommission which has occurred, that he may direct it to be rectified in the

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manner he may think most proper—and I conclude myself justified in the belief that this appeal to the sense of right and justice of the Prezident of the United States, will not be made in vain.

The essential ommissions are, in respect to the Slave-Brig "Magoun", under the American flag.

Count Tojal's [1] Note to Mr J. B. Clay,[2] dated 23d March 1850, with enclosures, showing that the Brig had entered a port wherein vessels were not admitted, according to Law & the Treaty with the United States.

Count Tojal's Note to Mr J. B. Clay, dated 6th April 1850, upon the same subject, with the opinion of the Attorney General of the Crown, in respect to the legal forfeiture of the "Magoun".

Mr de Figanière e Morão's Note to Mr Clayton, dated 18 July 1850, in reference to the same vessel, and its condemnation as a proved slaver.

Mr. de Figanière e Morão's Note to Mr Clayton, dated 1rst May 1850, in reply to Mr Clayton's published

Note of 30th April 1850, with reference to the adjustment of the Claims and laying the matter before Congress.

An approved written statement left with the Department of State, of the Official interview had, by appointment, at the said Department on the 14th August 1850. between the Secretary of State & the Minister of Portugal, which led to Mr Webster's published Note to Mr de Figanière e Morão, dated 5th September 1850.

Mr de Figanière e Morão's Note to Mr Webster dated 9th September 1850, in reply to the above: and, finally,

The Convention, itself, of 26th February 1851 with the *Notes Reversales* [3] of 26/28 February 1851, concerning the pending Portuguese Claims.

It is besides, very unfortunate that many typographical errors should have crept into this publication, some of them substituting words diametrically opposite to the original ones, at variance with the sense of the phraze:—then, an incorrect and unintelligible translation [4] of a very important document, the sentence of the Court of Justice condemning the said slave-Brig "Magoun"—nor, will the absence of every one of the American Chargé's Communications from Lisbon to his own Government upon the subject of these Claims escape the observation of any reader of this collection of Notes & documents. However, this is a mere passing remark, and for which I pray excuse, as it does not behove me, nor my Government to question an ommission of this kind, the motive for which rests exclusively with the Powers of this Government to consider.

For the better understanding of the remarks submitted, I take the liberty of transmitting to you, herewith, a Copy of the said Documents, with the ommissions in manuscript.

I avail myself of this occasion to offer to you, Sir, assurances of my very distinguished consideration

DE FIGANIÈRE E MORÃO

Elsewhere in these editorial notes, the eight papers (other than the convention itself) listed in the foregoing communication as "omissions" from House Document No. 53 are all cited and six of them are, in whole or in part, quoted.

The Negotiations during the Taylor Administration

The administration of President Taylor began on Monday, March 5, 1849, and Secretary of State Clayton took over the duties of his office on March 8. There were at that time five claims of American citizens

[1] João Gualberto de Oliveira, Conde do Tojal, Portuguese Minister and Secretary of State for Foreign Affairs.

[2] James Brown Clay, son of Henry Clay and Chargé d'Affaires at Lisbon.

[3] Notes of mutual concessions; printed above.

[4] As to this translation, see below under the heading "The *Magoun*".

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which had been previously presented to the Government of Portugal; three of these were the cases of the brig *General Armstrong*, James Hall, and the ship *Miles;* two were for trifling amounts (the ship *Ganges* and the brig *Long Island*); one other claim was in course of presentation at Lisbon, that in the case of the schooner *Col. Blum;* and still another case, that of the brig *Magoun*, based on events of 1847–48, was about to come to the attention of the Department of State. This convention dealt with the seven cases mentioned and with one other very small claim (the whaleship *Bolton*).

Of the pending claims, the case of the *General Armstrong* was and was deemed to be the most important; it was also the oldest in origin, dating from 1814; and it was the largest in amount, being for more than all the other claims together.

Some account of each of the cases covered by the convention is given below.

Under date of April 20, 1849, Secretary of State Clayton sent his first instruction on the subject of the claims to the Chargé d'Affaires at Lisbon, George W. Hopkins; therein was included a "general review" of five "principal cases"; there were no others, except the three trivial claims [1] mentioned above; [2] the instruction was in these terms (D.S., 14 Instructions, Portugal, 111–24):

> Your despatch Nº 15, of the 11th ultimo, was received here on the 9th instant. I have submitted it to the President, and represented and explained to him the very unsatisfactory condition in which the claims of citizens of the United States, upon the Portuguese Government, have been permitted to remain,—many [3] of them for a long series of years, in spite of the repeated remonstrances of the American Government, and the untiring efforts of successive Diplomatic Representatives from this country, who have, under instructions, again and again, vainly appealed to the Government of Portugal for their adjustment and liquidation. These appeals have been encountered by harrassing delays, until, at length, the patience of the claimants and of their Government has become exhausted. Reluctant, nevertheless, to take any steps, which might, by possibility, hazard the amicable relations of the two countries, and clinging still to the hope that Portugal is not obstinately bent upon closing her ears against a friendly power, by perpetuating the wrongs of which we complain,—the President considers his accession an auspicious moment to make one more appeal to Portugal. The injustice done us, and the delay of redress, would justify the severest animadversion, in speaking of these outrages, which, of late, seem to have increased in number and magnitude, in a direct proportion to the impunity with which they have been hitherto inflicted. In the intercourse of nations there is, and ought to be, a limit to such ill-treatment, beyond which, endurance ceases to be a virtue. That limit, it is believed, will soon have been reached, if Portugal shall still continue to be deaf to our just complaints. The responsibility must needs rest with her, if

[1] The aggregate amount of these three claims was $253.

[2] In a note of July 25, 1849, cited below, Hopkins named another case, the *Florence*, arising out of detention at Lisbon for "forty days or more at an expense of more than two thousand dollars"; but this complaint seems not to have been formally presented as a claim, as there is no later mention of it.

[3] Of the claims dealt with by this convention, two only, the case of the *General Armstrong* and that of James Hall, had been presented to the Government of Portugal prior to 1844; in that year the claim in the case of the *Miles* was presented; no other American claims had been put forward prior to 1849 except two for the very trifling sums of $32 and $21 respectively. Moreover, Secretaries of State Upshur and Calhoun, in 1844, had declined to renew the claim in the case of the *General Armstrong;* on this point see Moore, International Arbitrations, II, 1086–89.

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the American Government should be forced, by a sense of duty and of self-respect, into ulterior measures to enforce its demands. These measures, indeed, which a due regard to national honor may thus render necessary, belong, as you will understand, to the consideration of a distinct branch of the Government.

You are thoroughly conversant with the nature and details of our various claims upon Portugal, and with all the means, direct and indirect, which diplomatic ingenuity has exercised, to retard, or to defeat, their adjustment. It will not be needed, therefore, even if I possessed the necessary leisure, that I should enter into the particulars which each case presents. All that I shall have occasion to do, and mean to do, at this time, is to direct your attention to the following principal cases; and to pass them before you in a general review, as a preliminary to the present instructions, which I am directed by the President to give you, respecting them.

The oldest case of wrong, and the most remarkable, is that of the Privateer "General Armstrong", Captain S. C. Reid, destroyed in 1814, by a British Squadron, under the guns of the Portuguese fortress which protects the harbor of Fayal, after a defence as gallant and memorable as any act recorded in naval annals. This case will receive your earliest attention. It is as well known to Portugal as it is to us; and you are in possession of every thing respecting it that is required. In a despatch, Nº 23, of the 16th September 1843, Mr Barrow, our Representative at Lisbon, communicated a note from the Minister of Foreign Affairs of Portugal, on the subject, unfavorable to the claim, dated 3rd August of that year. That note, it appears, never received a proper reply. It will be found at page 48, printed Senate Document,[1] 1st Session, 29th Congress, containing the President's Message and accompanying papers,—communicating, in answer to a call from Congress, all the information on file in relation to the claim. The document has formerly been transmitted, but another copy is now sent. From the proceedings it will be seen, that Congress conceived it to be still within the competency of the Executive to effect a settlement; and it was accordingly referred back, without action, to this Department.

The next claim presented, is that of Captain James Hall, of the American Ship "Shepherd", which grew out of the seizure of a large sum of money forcibly taken on 17th February, 1828, from his ship by the Portuguese authorities in the harbor of Lisbon. The facts of this case are shown with force and perspicuity in your despatch Nº 8, of the 29th June last; and I concur with you in opinion that the American Government owes it to its own dignity, no less than to the rights of an injured American Citizen, to demand and enforce its payment. This claim will not be suffered to repose in the oblivion to which it has been so long consigned; and you will insist upon the execution of the judgment, or sentence, pronounced in favor of Hall, on the 29th November, 1828. Very full instructions, on the subject, were given to Mr Kavanagh, by Mr Forsyth, in despatch Nº 29, of 21st May, 1838. More than ten years have since elapsed, and the delay of settlement up to this period, is to be regarded in no other light than as an aggravation of the original wrong.

The case of the Ship "Miles" and cargo, of Warren, Rhode-Island, constituting a fair claim upon Portugal for the payment of a cargo of oil, taken by the officers and applied to the uses of that Government, presents, and adds, another outrage to the list of our wrongs. The first instructions respecting this claim, were transmitted from this Department in a despatch to Mr Rencher, under date of 18th October, 1843, accompanied by various papers and evidence in illustration, from H. G. O. Colby, in behalf of Wheaton and others, owners of and interested in the vessel. The parties were directed to correspond and did correspond with the Legation, and supplied ample testimony; upon which the claim was urged with zeal and assiduity, but, as usual, without success. Your predecessor, with your sanction and concurrence, made an elaborate reply to the objections that had been raised, in this case, by the Portuguese Minister of Foreign Relations; and he submitted a general and conclusive argument upon the disputed points. This able note comprised a fair and full statement of the case. The argument was unanswerable; and in fact was never answered. No notice whatever, it would seem, has yet been taken of this note, nor, indeed, of your own subsequent communications on the same subject,—although a portion

[1] No. 14, serial 472.

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of the claim was distinctly admitted by the Portuguese Minister at an early period of the correspondence. If this claim be not allowed and provision made for its liquidation,—due, as you justly observe, not less to the violated rights of our citizens than to our own self-respect,—indemnification will have to be insisted on. The correspondence and papers in this case, were called for by a Resolution of the Senate of the 24th April, of last year, and communicated, with a Report from this Department. A copy of the printed document [1] is herewith sent for your use.

Again: on the 31st January, of the present year, this Department was forced to direct attention to another injury perpetrated by Portugal upon American citizens. This was the case of the Schooner "Colonel Blum", in which the owners and underwriters presented their claim against that Government, for losses sustained in consequence of the illegal seizure of that vessel, and her subsequent destruction, at the Isle of Sal, Cape Verds. A number of documents and papers, supplied by the individuals aggrieved, were then forwarded; and in further illustration of the facts supporting the claim, I now transmit to you two other series of papers, recently communicated to me, by the Secretary of the Navy,—lists of which are here annexed.[2] I need scarcely refer to Mr Buchanan's despatch respecting this case, which instructed you to demand reparation and indemnity for acts so flagrantly unjust and inhuman,—the recurrence and repetition of which, it was remarked, could only tend to embarrass and impair the relations of the two countries. I perceive, too, by your last despatch, No 15, that you were about to urge this case upon the Portuguese Government.

Following in the immediate wake of the last, another "outrage upon an American vessel", the Brig "Magoun", H. N. Russell, late Master, has been brought to my notice, by a letter dated New-York, 31st ultimo, from Mr George M. Ushur, a copy of which I herewith transmit, together with the original papers that accompanied it. The additional evidence promised by the writer, will be forwarded to you as soon as it shall have come to hand. Mr Ushur was promptly informed, that you would receive due instructions, the moment the case should be properly set forth, and substantiated by evidence. Mr Ushur's letter was received at the Department on the 4th Instant. Your despatch No 15, giving further particulars of this new wrong, reached me a few days after, vizt: on the 9th instant. From your statement it is clear not only that the "Magoun" was illegally seized by the Portuguese authorities at Mozambique, but that both the Captain and the Mate died in consequence of the barbarous treatment they received at the hands of the local authorities of that place. The matter has been referred to the Secretary of the Navy, with a request that he would cause to be instituted a strict investigation of the facts, through the Commanding Officer of our Squadron on the Coast of Africa. His report, and all other evidence obtained, will also be sent to Lisbon. But feeble hope is entertained that any exertions on your part, in regard to it, will be crowned with greater success than that which has attended former applications. It is revolting to contemplate such a succession of unfriendly acts; exhibiting a studied course of conduct, inconsistent with the relations which ought to subsist between Christian Powers. It is high time that the just indignation of the American Government should be aroused and directed towards the protection of the rights of these, our suffering citizens.

I have drawn a very imperfect picture of the grievances so long borne by our countrymen in their intercourse with the friendly Government of Portugal. You are able to complete the sketch. You are exactly informed as to the history, character and condition of all our claims on Portugal; and will, therefore, as I have already remarked, require no specific or minute directions respecting them, from this Department. You have in possession, also the evidence to support them, which has been received,—and all correspondence in regard to them, which has passed. Deeply sensible, both as a Minister and a man, of the gravity of the subject, and painfully convinced of the hopelessness of continuing to prosecute them in the ordinary mode prescribed and adopted in the intercourse of civilized nations,—bound together by ties of interest and Treaty obligations,—you have

[1] Senate Executive Document No. 64, 30th Congress, 1st session, serial 509.
[2] Not printed.

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invoked the interposition of your Government, and recommended a recourse to other and more decisive measures, than those heretofore relied on.

It is under these circumstances—here rather adverted to, than unfolded in detail—that the President has resolved to make one more attempt to procure satisfaction for American claimants, and to assert the national honor; and in this resolve it will be your duty to convince the Portuguese Government that he is in earnest, and will not be turned aside from his purpose. You will impress upon Portugal this idea: that, on entering upon the duties of his high office, as Chief Magistrate of the United States, the President determined that he would assert the rights of his fellow-citizens upon foreign Governments; proceeding upon the principle, often avowed by our Government, "to make no demand not founded in justice, and to submit to no wrong".

The mode of executing these instructions is confided, in a great measure, to your own discretion. It may be your election to address a general note on the subject,—embracing brief statements of facts, and suggesting the measure of compromise, redress or indemnity, that will be accepted;—or you may present each claim in a separate form. You will make it distinctly understood, that the period of procrastination has gone by; and that immediate decision is demanded. Further delay will be construed into denial. It is in contemplation to lay before Congress the result of this final appeal, at an early period of the next Session. Should it so happen, unfortunately, that a satisfactory answer be denied, or withheld, until the arrival of the period for making the proposed communication, the subject will then be submitted, as it shall at the time stand, to that Body; and the Portuguese Government may rest assured that any measures which Congress, in their wisdom, may decide upon as due to our citizens and country, will be faithfully carried out by the Executive.

In presenting this view of the subject to the consideration of the Portuguese Government—as a frank avowal of a fixed determination on the part of the United States Government,—you will be most careful to represent, at the same time, the extreme anxiety of the President to avoid being forced to suspend or interrupt present diplomatic relations with Portugal; because a recourse to that measure would, most probably, prove to be but the antecedent to Reprisals.

The despatch of Hopkins which is referred to in the foregoing instruction and which seems to have had some influence in its framing dealt chiefly with the case of the brig *Magoun* (D.S., 15 Despatches, Portugal, No. 15, March 11, 1849). After mentioning the report that the *Magoun* had been condemned on the ground that she was engaged in the slave trade on the east coast of Africa, the despatch included these passages:

I am anticipating the grossest outrages upon our commerce in that quarter under this very plausible pretext and know it is my duty to warn my government of the great necessity of promptitude and vigilance in the just protection of our merchantmen engaged in lawful commerce on that coast, or who may by misfortune be driven upon it. : : : And I regret to say that in view of the habitual and ungenerous disregard, which this government continues to manifest towards unadjusted claims of citizens of the United States, of the most clear and as I think unquestionable justice, our government will not, and cannot delay much longer the indemnification which it has sought so long to bring about by the peaceful means of negociation.

Acting pursuant to the instruction of April 20, 1849, Hopkins took up first the case of the *General Armstrong* and addressed a lengthy note thereon to the Portuguese Minister and Secretary of State under date of June 28, 1849, concluding with these paragraphs (D.S., 15 Despatches, Portugal, No. 21, June 29, 1849, enclosure; printed in House Document No. 53, pp. 20–33):

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Thus stands the claim of the owners, officers and crew of the American privateer Genl Armstrong, which has been the subject of fruitless negociation, and of harassing delay for more than thirty years. The Undersigned having (as he trusts) succeeded in vindicating his injured countrymen from the aspersion sought to be cast upon them of having been the aggressors, and by a faithful recurrence to the unvarying history of the transaction, fully established the justice and validity of the claim, it only remains for him to submit it *once more* for the definitive determination of Her Majesty's Government. Personally the Undersigned would be much gratified to see this claim brought to an amicable and satisfactory issue, but in any event, unless further negociation could promise other results than further delay, he must insist upon being informed of the final decision of Her Majesty's government, at least as early as the first day of October next. If not the President of the United States will be justified in regarding further delay as a denial of justice, and will be left to adopt such steps, as the rights of his injured fellow-citizens may require.

In intimate connexion with this subject the Undersigned will at an early day, call the attention of Your Excellency, to other claims in behalf of sundry citizens of the United States, which remain to be adjusted and he will then have the honor of referring with more particularity to the views and expectations of the President of the United States in relation to these subjects. At present the Undersigned will only add, that the government of the United States entertains no doubt about the justice and validity of these claims. The President of the United States, sincerely desires to cultivate peace with every nation and people. But he will never compromit the dignity of the Republic, nor abandon the just rights of his fellow-citizens to attain any end. Animated by a scrupulous regard to the rights of others, he will proceed upon the principle often avowed by his government, "to make no demand not founded in justice, and to submit to no wrong".

Correspondence at Lisbon on the case of the *General Armstrong* continued; four notes were written by the Conde do Tojal (September 29, 1849, and March 9, April 15, and May 15, 1850) and four by James Brown Clay, who succeeded Hopkins as Chargé d'Affaires at Lisbon and presented his credentials on October 18, 1849 (November 2, 1849, and March 15, April 24, and May 16, 1850); those exchanges, in which the positions previously taken by the two Governments on the merits of the case were maintained, are printed in House Document No. 53, pages 33–66. Also to be cited are the notes of the Portuguese Minister Resident at Washington, Joaquim César de Figanière e Morão, to the Secretary of State, dated November 9, 1849, April 27, 1850, and July 9, 1850 (*ibid.*, 89–91, 92–97, 101–9).

By note of July 19, 1849, Hopkins again presented the claim in the case of James Hall (D.S., 15 Despatches, Portugal, No. 23, July 19, 1849); the answer of the Government of Portugal (March 22, 1850) was another definitive rejection of the claim, after consideration thereof by the Council of State (*ibid.*, No. 14, March 28, 1850, and enclosures E, F, and G; these and the note of July 19, 1849, are printed in House Document No. 53, pp. 117–27; see also *ibid.*, 92–97, the note of the Portuguese Minister Resident of April 27, 1850).

Prior to the instruction of April 20, 1849, Hopkins had called to the attention of the Government of Portugal the case of the *Miles* by notes of March 21 and November 7, 1848 (D.S., 15 Despatches, Portugal, No. 5, March 29, 1848, enclosure, and No. 11, November 28, 1848, enclosure); and the case was again definitely put forward by Hopkins in his note of July 25, 1849, wherein indemnification was "insisted upon" (*ibid.*, No. 24, July 25, 1849, enclosure); the answer-

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ing note of April 11, 1850, is cited and quoted below in the discussion of "The Other Claims", under the heading "The *Miles*" (those two notes are printed in House Document No. 53, pp. 134–39; the note of Hopkins of July 25, 1849, also refers to the case of the *Col. Blum*, and to four minor claims, of one of which, the *Florence*, no further mention has been found in the diplomatic correspondence; the claim of Osborne & Company and the *Long Island* were not two claims, as Hopkins supposed, but one).

The correspondence of 1849–50 relating particularly to the cases of the *Magoun* and the *Col. Blum* is dealt with in the discussion of those two cases under the heading "The Other Claims".

Apart from proposals of arbitration (discussed below), the result of the exchanges to June 1850 regarding the five "principal cases" was that in three of them (the *General Armstrong*, James Hall, and the *Col. Blum*) all liability was denied by the Government of Portugal; in the case of the *Miles*, liability in small part only was admitted, with a proposal otherwise to refer the case, as being "purely mercantile", to the arbitration of merchants of Lisbon; in the case of the brig *Magoun*, the claim for the vessel was definitely rejected, with reservation of the reclamations for a passenger and for the personnel for further consideration.

In his despatch of August 28, 1849 (D.S., 15 Despatches, Portugal, No. 25), Hopkins had suggested that a reference to the state of the negotiations upon the claims be included in the annual presidential message to Congress. Referring to that despatch, Clayton, on September 27, 1849, wrote thus (D.S., 14 Instructions, Portugal, 131–32): "As the President's mind is entirely made up to insist upon the violated rights of the claimants, prompt and energetic measures will be taken by him as soon as Congress convenes, unless he receives, through you, by or before that period, assurances such as will justify further forbearance on his part." The message to Congress of December 4, 1849, includes this paragraph (Richardson, V, 12–13):

> Our claims upon Portugal have been during the past year prosecuted with renewed vigor, and it has been my object to employ every effort of honorable diplomacy to procure their adjustment. Our late chargé d'affaires at Lisbon, the Hon. George W. Hopkins, made able and energetic, but unsuccessful, efforts to settle these unpleasant matters of controversy and to obtain indemnity for the wrongs which were the subjects of complaint. Our present chargé d'affaires at that Court will also bring to the prosecution of these claims ability and zeal. The revolutionary and distracted condition of Portugal in past times has been represented as one of the leading causes of her delay in indemnifying our suffering citizens. But I must now say it is matter of profound regret that these claims have not yet been settled. The omission of Portugal to do justice to the American claimants has now assumed a character so grave and serious that I shall shortly make it the subject of a special message [1] to Congress, with a view to such ultimate action as its wisdom and patriotism may suggest.

In a conversation of January 4, 1850, arbitration was first mentioned by the Conde do Tojal. In his despatch of January 8, 1850, enclosing notes of that conversation, Hopkins wrote (D.S., 15 Despatches, Portugal, No. 8):

[1] No special message was sent.

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You will perceive that he mentioned an Arbitration as a mode of settling our claims. He did not make a distinct offer to arbitrate, but I have little doubt, if thought advisable, that I could make an arrangement for that purpose. I do not however advise that course; on the contrary my opinion is against it, because I know of no party to whom the claims could be submitted with a prospect of perfect impartiality, and because some of them are too just to submit to any tribunal whatever.

I see no reason to expect their settlement without either Arbitration or force.

The presidential message of December 4, 1849, was available at Lisbon on January 23, 1850. Clay wrote that the passages regarding relations with Portugal had "produced here a great sensation" and that the Minister and Secretary of State for Foreign Affairs had been "talking with almost every member of the Diplomatic Corps, respecting our claims, especially that of the Gen[l] Armstrong" (*ibid.*, No. 9, January 29, 1850).

Under date of March 2, 1850, the following instruction was sent to Clay by Secretary of State Clayton (D.S., 14 Instructions, Portugal, 136):

I have received your despatches to No. 9 inclusive, and I have now to inform you that the President has ordered final instructions to be sent, which will be delivered to you by the Commander of the Mediterranean Squadron, who will soon be ordered to repair to Lisbon to demand the final reply of the Portuguese Government and to receive you on board and convey you to a place from which you can embark in a steamer for the United States, in the event of an unfavorable answer. Of this proposed measure I have only time, by this mail, to give you this notice: but will forward a duplicate of the instructions referred to, which are now in preparation.

The "final instructions" were dated March 8, 1850; they included a disapproval of arbitration and stated as the "established principle" of the sums to be demanded, "the highest amount of damages, which in your judgment, a prudent and conscientious man, would feel himself justified in asking, if he were prosecuting his own claim".[1] The text of the instructions, with the omission of a few irrelevant lines, follows (*ibid.*, 137–40):

Your despatches to No. 9 inclusive, have been received at the Department of State,—No 8 on the 12th. ultimo, and No 9 the 1st. instant. : : :

In regard to a reference of our claims to an arbiter, which has been indicated, the President has directed me to say that no such course will, under the circumstances, receive his sanction, and this for reasons too obvious to need enumeration.

Although the President is very far from being satisfied with the present state of our claims upon Portugal, as explained in your despatches, yet he has determined to make another effort to draw from the Government of Portugal an explicit and final reply to the demands made upon her sense of justice by your predecessor and yourself, under the instructions of this Department. This course, the President hopes will be properly appreciated by Portugal, and be followed by an admission of, and consent to, some equitable agreement for, the payment of our just demands. If however nothing more definite and decisive in character, than what has already been advanced, shall in the interim, have been offered or agreed upon by Portugal, you will, upon the receipt of these instructions, address

[1] This "principle" was adopted from an instruction of September 21, 1836, written regarding the case of the *General Armstrong* (D.S., 14 Instructions, Portugal, 48–50; see Moore, International Arbitrations, II, 1084).

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a note to the Minister of foreign affairs acquainting him, that though the just expectations of the President, have been disappointed, he is still desirous of making another effort, and that you are instructed to demand, for the last time, an explicit answer on the subject of our claims, and the adoption of immediate measures for their prompt and full adjustment—that the ship of war sent to convey these instructions, and to receive the answer to them, will wait a reasonable time for that answer,—and if, by, or within that period satisfaction is not given, and due provision made for the payment of our citizens, that you are ordered to demand your passports, and return to the United States.

If none or an unsatisfactory answer be given at the expiration of, or before this period, you are hereby instructed, by the President's order, to quit Lisbon at the specified time, it being understood of course that these instructions proceed upon the supposition that you shall have made, previous to their receipt, no satisfactory arrangement in regard to our claims under former instructions.

Your remarks (in No. 9) in reference to such items in the claims, as in your judgment, could not be fairly insisted upon, are proper and have received attention. It is our desire and duty to facilitate in every possible way the adjustment of the claims, and an acknowledgment of them as a whole, and not to obstruct their admission by inflexibly insisting upon minor points in particular cases. If special and particular objections be urged in individual cases, so as to prevent or retard a simultaneous arrangement of the whole, you will obtain a formal recognition and allowance of all those, at least, which have been or ought to be admitted without any delay; taking care that from such partial action or settlement, no inference shall be drawn to prejudice in any manner or form the remainder. If practicable, it would be still better to fix a round sum to discharge all these claims, leaving the claimants to settle the amounts due them respectively before a Commissioner at home. The terms of payment need not interpose any formidable difficulty, your principal object being to procure the liquidation of the claims, and after that the most favorable terms that may be practicable. Interest of course is always to be required upon deferred instalments if that method of payment should be agreed upon. The details of settlement are left to your discretion. Interest on the principal sum due in the Armstrong case, or any other must of course depend on the circumstances and is always a subject for fair compromise and amicable arrangement. Invested with ample authority, you have now no occasion to appeal further to this Department, for its opinion or directions. The claims, together with the principles and evidence on which they rest, furnished by the claimants themselves, are all before you, and after soliciting the interference of their Government to procure redress and indemnity for the injuries, damages, and losses they suppose themselves to have sustained, the parties, most certainly, are bound, and must abide, by such settlement as their Government may be enabled to effect for them. There is one established principle applicable, in these, and like cases, and governed by it, you will demand of the Portuguese Government, in every instance, the highest amount of damages, which in your judgment, a prudent and conscientious man, would feel himself justified in asking if he were prosecuting his own claim.

This despatch will be sent to the Secretary of the Navy, who will issue the proper orders to the Commander of the Mediterranean Squadron to proceed with it to Lisbon and deliver it into your hands, and there to await the decision of the Portuguese Government, for the space of twenty days, or even longer if you shall deem it indispensably necessary for him to do so, under circumstances which may contingently arise, and of which the Department cannot now perceive the existence, or calculate the importance. In this, as well as other matters much must be left to your own sound discretion. As some time must necessarily elapse before this despatch, shall reach Lisbon an opportunity will be afforded the Department to address you again, if any thing shall occur here, or be received in the interval from you, to render it necessary. A duplicate of this despatch will be sent to you immediately, by mail, with a duplicate of my last letter of the 2d instant.

The "final instructions" were sent "open for perusal" to the Secretary of the Navy, William Ballard Preston, on March 9 (D.S., 37 Domestic Letters, 468–69); on the same day orders to Commodore

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Charles W. Morgan, U.S.N., commanding the United States Squadron in the Mediterranean, were issued and communicated to the Secretary of State by the Secretary of the Navy, who thought that the "final instructions" would reach Clay by the following May 1 (D.S., Miscellaneous Letters, March–April 1850); the naval orders were in these terms (*ibid.*):

NAVY DEPARTMENT *March 9th 1850.*

SIR, Enclosed herewith you will find a despatch from the Honorable J. M. Clayton, Secretary of State of the United States, addressed to "James Brown Clay Esquire U.S. Chargé d'Affaires, Lisbon Portugal"

The importance of the subject discussed in the despatch has determined the Department to order you, and you are hereby ordered, to proceed forthwith in the flag Ship of the Squadron under your command to the port of Lisbon, where you will, in person, deliver the despatch to Mr. Clay.

You will await the decision of the Government of Portugal for the space of twenty days, or even longer should Mr. Clay deem it indispensable for you to do so.

Should the reply of the Government of Portugal to Mr. Clay be such as to induce him, under the instructions of our Government to terminate his mission you are ordered to receive him on board your Ship.

Should the Chargé desire it, you will convey him, in your Ship, to such point as will enable him to avail himself of the English packets to proceed to England.

After performing this service you will return to your Station in the Mediterranean, keeping the Department advised of all your proceedings.

I am very respectfully
Y'r Obt. S't.

Wm BALLARD PRESTON

Commodore CHARLES W. MORGAN
Commd U.S. Squadron Mediterranean

The "final instructions" of March 8, 1850, were the last of any importance sent to Clay at Lisbon; Clay received the duplicate thereof by April 22; but the original, on which alone he could act, was not in his hands until nearly two months later.

An offer of arbitration of the case of the *General Armstrong* was made at Lisbon (April 15, 1850) with a suggestion of the King of Sweden and Norway as arbiter, which Clay refused (April 24); and on the same date Clay also refused a proposal of April 11 to refer the case of the *Miles* to the arbitration of merchants of Lisbon (see House Document No. 53, pp. 56–61). Clay acted on the basis of his "final instructions" and in accord with his own sentiments; he wrote thus on April 22 (D.S., 15 Despatches, Portugal, No. 17):

Having received the duplicate instructions Nº 8, which informs me that the President is opposed to an arbitration of the claims against this Government, and believing myself that such a course is not calculated to procure a fair and impartial decission, it [the *General Armstrong*] being moreover the only case in which arbitration is proposed, except that of the Ship Miles, which I regard as absurd, and desirous to prepare the way for the course it will be my duty to take on the arrival of the original Nº 8, which will be in a few weeks, I shall address to the Minister a note declining both the proposed arbitrations.

In a note of April 27, 1850, the Portuguese Minister at Washington, after reviewing some of the claims and referring to others, concluded with a definite offer of arbitration of three of the "principal cases", those of the *General Armstrong*, James Hall, and the *Magoun*.

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The final paragraphs of the note of April 27, 1850, are as follows (D.S., 4 Notes from the Portuguese Legation; printed in House Document No. 53, pp. 92–97):

It was, therefore, with much regret that the Undersigned perceived, at his late interview with the Honble Secretary of State, that the foregoing decisions were apparently received with dissatisfaction, specially with reference to the cases of the "Genl Armstrong", and that of the Ship "Shepherd".

The Undersigned concurs with the Honble Secretary of State, in the belief that direct Diplomatic measures are exausted in respect to these cases; he also admits that the American Government is under strong impression, that Portugal ought to pay for the loss of the "Genl Armstrong"; but he will take occasion to state, that his Government as well as himself, are as strongly convinced that, under all the circumstances of the case, the Portuguese Treasury is not bound to make good that loss.

There exists a different, yet honest conviction in both Governments in reference to this case, which ought not, nevertheless, the Undersigned thinks, to disturb the existing harmony and friendly relations between the two Countries; and, as the American Chargé, in replying to Count Tojal's note of the 9th March last,[1] again insists upon the justice of that claim, the Undersigned has been authorised to state to the Honble Mr Clayton—should the reasons assigned by Her Maj^y^'s Government, in the course of this unfortunate controversy, for rejecting the claim, be considered inconclusive by the American Government—that the Government of Portugal proposes, when answering to the above reply, to offer to terminate the question by both Parties agreeing to refer the case, of the Privateer Brig "General Armstrong", to the decision of a third friendly Power, thereby giving a manifest proof of its good faith, and of its friendly sentiments towards the United States of America.

And, should the American Government believe—which can hardly be expected—that it has just cause to complain of the proceedings, in the case of the "Shepherd", or even of those in respect of the "Magoun"; the Undersigned, fully acquainted with the friendly sentiments of his Government towards that of the United States, and of the desire it cherishes to continue good relations with this Republic, therefore, of its disposition to have recourse to any fair and honorable measure tending to avoid any interruption in the long subsisting harmony between the two countries, and, moreover, anxious to remove all suspicion, however slight, in respect to the good faith and rectitude of Her Majesty's Government, feels himself authorised, and undertakes to offer, in the name and in behalf of his said Government—who will undoubtedly confirm the proposal—to refer, also, either or both the above cases to the decision of the same third friendly Power as may be selected, and will accept, to arbitrate in the "Genl Armstrong" case, or any other third Power.

In conclusion, the Undersigned requests the Honble Secretary of State will honor him with as early a reply to this Note, as his convenience may permit, that it may be laid, with as little delay as possible, before the Queen's Government at Lisbon; and, he avails himself of this opportunity to renew to the Honble Jno M: Clayton the assurances of his distinguished consideration and perfect esteem.

In answer to the Portuguese note of April 27, Clayton wrote (April 30) frigidly to the effect that the decision of the President would be communicated to the Government of Portugal through the Chargé d'Affaires at Lisbon; and this paragraph was added (D.S., 6 Notes to the Portuguese Legation, 101–2; printed in House Document No. 53, pp. 97–98):

The undersigned, in conclusion, is compelled to add that, should the Portuguese Government persevere in the refusal to adjust, and settle what are believed to

[1] Printed in House Document No. 53, pp. 49–53.

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be the incontrovertible claims of American citizens upon that Government, the only alternative left to the President will be immediately resorted to,—the submission of the whole subject to the decision of the Congress of the United States, whose final determination as to the mode of adjustment, will have all its appropriate and legitimate influence upon the future course of the Executive.

De Figanière e Morão responded (May 1) to Clayton's note of April 30; the Portuguese Minister, regretting that the offer of arbitration had not had the approbation of the American Government, welcomed the submission to Congress of "so fair and conciliating a proposition" and added (D.S., 4 Notes from the Portuguese Legation; this note of May 1, 1850, was one of those listed by the Portuguese Minister in his complaining note of September 23, 1852, printed above, as having been omitted from House Document No. 53):

The undersigned is persuaded, that both the Honble Secretary of State and the Congress of the United States, in this proposal of the Queen's Government—which the undersigned here again renews and reproduces, to submit any, or all of the pending claims of Citizens of the United States against the Government of Portugal to the decision of a friendly Power—will see a renewed proof of the constant desire which Her Majesty's Government retains to preserve such relations with the United States of America, as are befitting their close and long established amity.

On May 15 the proposal of the Portuguese Government to refer the case of the *General Armstrong* to the King of Sweden and Norway was renewed at Lisbon, with an expression of willingness to accept the decision of any other sovereign; and the case of the *Miles* was also again put forward as one suitable for determination by "competent arbitration". Clay answered on the next day, declining the proposals (D.S., 15 Despatches, Portugal, No. 20, May 18, 1850, enclosures; House Document No. 53, pp. 61–66).

On May 20 De Figanière e Morão wrote to Clayton (D.S., 4 Notes from the Portuguese Legation), enclosing translations of two notes written to Clay at Lisbon on April 11 and 13; the latter related to one of the small claims; the former was the note (cited above) which proposed the reference of the case of the *Miles* to the arbitration of merchants; the Portuguese Minister also called attention to the offer made at Lisbon on April 15 (also cited above) to refer the case of the *General Armstrong* to the decision of the King of Sweden and Norway. Clayton answered on May 24 that he believed the decision of the American Executive on the question of arbitration had been made known at Lisbon to the Government of Portugal (D.S., 6 Notes to the Portuguese Legation, 102–3; see House Document No. 53, pp. 98–99).

In the note of Tojal dated May 28, 1850, which dealt with the case of the *Col. Blum*, an offer was made to refer all pending claims to an arbitrator of mutual choice. Clay answered on May 29 that he was not authorized to accede to the proposition (D.S., 15 Despatches, Portugal, No. 22, May 30, 1850, enclosures; House Document No. 53, pp. 154–60).

By a note of May 25, 1850, De Figanière e Morão sought to put forward certain old claims of Portuguese subjects (D.S., 4 Notes

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from the Portuguese Legation; House Document No. 53, pp. 179–80; see also *ibid.*, 193–200); the answer of Clayton (May 30) included this paragraph (D.S., 6 Notes to the Portuguese Legation, 103–5; House Document No. 53, pp. 180–81):

> Neither leisure, nor inclination, permit the undersigned, to dwell upon the reasons, which may have impelled Portugal to the extraordinary course, she has adopted at a juncture, when the relations of the two countries have become invested with a critical interest; but the undersigned cannot close this note without remarking, that the just claims of citizens of this country, upon Portugal,—which have recently, after many years of neglect, been either denied by that Government, or met by propositions of reference to Lisbon merchants and others,—will lose none of the merit, which characterizes them, nor any portion of that protection, which this Government has determined to extend to the claimants, by the sudden resuscitation of these unfounded pretensions.

Commodore Morgan was delayed in arriving at Lisbon; Clay wrote thus on June 8 (D.S., 15 Despatches, Portugal, No. 23):

> Commodore Morgan has not yet arrived, and all I can hear of him, is from a letter of the Consul at Gibraltar of the 4th inst, who informs me that he has noticed by late advices from Naples, that the Independence, bearing the Commodores pennant, was likely to leave there for Lisbon on the 24th May. I do not know whether it was the intention of the Department to keep his coming a secret, but I have reason to believe, that this Government was informed from Washington of the nature of my instructions almost as soon as I was, and I know that they have heard long since, of the Ships destination both from Naples and Gibraltar. I cannot conceive why the Commodore has delayed so long; it has certainly prejudiced the settlement of the claims, for had he arrived previous to the 28th ultimo, no offer would have been made to arbitrate them, and this Government would then have stood in a much worse position before the bar of public opinion. If he left Naples on the 24th ult°, he may be here any hour.

Once more at Lisbon, in exchanges dealing with the case of the *Magoun* (June 18 and 19, 1850), the offer to refer all pending claims to the decision of a third power chosen by both Governments was made and was declined on the ground of lack of authorizing instructions (D.S., 15 Despatches, Portugal, No. 25, June 28, 1850, enclosures, with a translation of the former; printed in House Document No. 53, pp. 148–52).

The original of the "final instructions" to Clay of March 8, 1850, was handed to him by Commodore Morgan on June 19; an interview on June 20 between Clay and Tojal, had at the request of the former, is thus reported in a memorandum signed by Clay (D.S., 15 Despatches, Portugal, No. 25, June 28, 1850, enclosure):

> In pursuance of an appointment made last night at my request, I called to day at 10 o clock upon Count Tojal at his private residence for the purpose of conversing with him respecting our affairs.
>
> In the commencement of the interview I said to him that I had desired it for the purpose of talking *privately* of our affairs, and that without his permission I would not proceed; he replied that he would be very glad to hear any thing I had to say. I then said that I wished him distinctly to understand that what I was about to say was dictated by the sincerest desire on my part for the friendly settlement of our affairs, and that I assured him nothing was farther from my intention than to say a single word which might appear like threat; that I was afraid that he had conceived erroneous impressions upon three points, which I wished to dispel, That the Steamer which had just arrived had brought me in-

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structions upon which I did not wish to act before I had attempted to do so. The three points to which I referred were 1st that I was afraid he was deceived by the hope that my government would consent to arbitrate our claims, I offered him reason upon reason to convince him that this was unfounded, and went so far as to shew him in confidence a passage of a private letter I had received from Washington, giving me an account of a confidential conversation had there, which in my opinion precluded the possibility of such a course. He replied that he would be perfectly frank with me, that Mr Figaniere had long since informed him, that I had been sent instructions to demand my passports, but which left me considerable discretion, that he had also informed him that the President could not proceed to force without the assent of Congress, and that he had conversed with Mr King,[1] Chairman of the Committee of Foreign Affairs in reference to the claims, who had said that he thought Mr Clayton had proceeded too fast, and that when referred to Congress, they would agree to arbitrate. I told him that I was sure Mr King was deceived, and that I knew the President was determined

The second point of which I wished to disabuse his mind, was the impression I feared he entertained, that a change in the Cabinet at Washington would affect this business

The third, was connected with the first in the conversation, that I feared he was influenced by the hope that Congress would not sustain the Executive. I shewed him extracts from private letters upon these points from a Senator,[2] one of the leaders of the Whig party, informed him that I had seen a letter from Mr Hopkins my predecessor, whose sentiments he knew, and whom he knew to be a Democrat, stating that he had been called to Washington on this business, and that he thus saw against his hopes the President, Whigs and Democrats: that each and all would deprecate a difficulty with Portugal, but that they would insist on her doing justice.

He stated that if he were the Minister of an Absolute Government, we would have no difficulty in settling the affairs, but that as it was, he was obliged to be governed by the laws and the opinion of others; I said that I saw the difficulty of his position, constituted as this Government was, and that I supposed he thought it necessary to let the responsibility rest upon other branches of the Government: to this remark he did not dissent, but I understood him to admit it to be true: He said that he had sent the claim of James Hall to the Council with the strong hope that they would authorise him to pay it, because he thought it a hard case &c &c

When I rose to leave, I told him that perhaps Mr Figaniere was deceived as to the extent of my discretion; he asked, what was to be done; I replied that I could not advise; he asked if I would make any proposition; I replied that I could not; he asked again what I thought ought to be done; I said that although I had not the slightest right to give advice, if I might say so without presumption, I thought he might write to me and say, "you have refused arbitration, what amount will you accept upon all the claims", and that I would reply and state an amount in gross, or make an account of the separate claims, as he desired, but that of course he would do what he thought best.

Much more was said upon one claim or the other, but altho' I talked about them, I said that I did not mean to discuss them.

He stated in the course of the conversation that if we made a blockade or took forcible measures, that they would have to pay, but that we would be paying ourselves, and that the whole correspondence would be published to the world in French and other languages: I made no reply to this threat.

As I took my leave, he said that he knew my desire was to settle the affairs amicably, and I understood him to say that he would go to the Palace about what I had said, or something to that effect. I told him I should not send my final note until to morrow.

This conversation occurred about an hour since, and altho' perhaps everything is not in the precise order or language in which it took place, is the substance literally of what was said.

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[1] William Rufus King, of Alabama, a Democrat, Chairman of the Senate Committee on Foreign Relations.

[2] Perhaps Henry Clay, father of the writer.

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Tojal, after conferring with his colleagues, on the same day requested a written communication of "the points about which you desire an immediate and decisive answer, in order that I may, without loss of time, submit the same to the consideration of the Cabinet and the Council of State, without whose advice it is impossible to give you a comprehensive answer, seeing that verbal propositions of such magnitude and importance, liable as they are from their very nature to be mistaken, can in no way be made the subject of deliberation by Her Majesty's Government". This request Clay at once stiffly refused, saying that the interview was "*private*" and that he had made no proposition whatever (D.S., 15 Despatches, Portugal, No. 25, June 28, 1850, enclosures; printed in House Document No. 53, pp. 66–67). On the next day (June 21) Clay sent in what he called his "final note"; therein, after passing briefly in review "the principal claims" and referring to the smaller ones, he wrote (enclosure DD to the despatch last cited; printed in House Document No. 53, pp. 69–72):

Up to the 1st of October 1849 a definitive answer had been made to but one of the three first mentioned claims,[1] [that of the owners &c of the General Armstrong, notice of whose rejection was communicated by note of the 29th September 1849][2] and the Government of the United States would have been perfectly justified on the following day, to consider, as it had declared it would do, that justice was denied. Since that time the remaining four principal claims have also been rejected by the Government of Her Majesty as inadmissible, for reasons altogether unsatisfactory and which cannot be successfully maintained; indeed many of the arguments advanced by the different Representatives of the United States, and especially those upon the claims of James Hall, and of the Ship Miles, have never been in any manner replied to.

Although the Government of the United States has always considered these claims to be perfectly just, yet constantly actuated by the strongest desire to maintain amicable relations with Portugal, it has patiently waited, whilst months, and in some cases, years, have elapsed before answers even, could be obtained to the official notes which had been addressed concerning them; it has forborne to take advantage of the position in which it was placed on the 1st of October 1849, and the undersigned has continued to heap argument upon argument, so long as there was any reason to believe, that there was not a fixed purpose to deny all justice. It has now become his duty in obedience to instructions brought to him by the Commodore, commanding the United States Mediterranean Squadron, conceived by His Government in the same spirit, to avoid if possible a rupture of friendly intercourse, to demand, for the last time, of the Government of Her Majesty, whether it will or will not adopt immediate measures for the prompt and full adjustment of the above mentioned claims? he is further ordered to say, that the Ship of War, which has brought him these instructions will wait a period of twenty days for the answer of Her Majesty's Government, and if, by or within that period, satisfaction is not given, and due provision made for the payment of the claims, he is ordered to demand his passports, and return to the United States.

Clay reported his proceedings in his cited despatch of June 28, 1850, adding these paragraphs:

I did not proceed, I assure you, to address this final note, until I was perfectly satisfied, beyond a doubt, that all efforts at further negociation of a different character would be fruitless, and that the Ministry of this Government would not take the responsibility of doing us justice; altho it will appear from the paper[3]

[1] The cases of James Hall and the *Miles* were the other two.
[2] The brackets are in the source paper.
[3] Memorandum of the conversation of June 20, printed above.

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marked AA, that it was the desire of the Minister of Foreign Affairs to pay at least one of the claims.

On the day following the transmission of my final note, the Ministry being called upon in the Cortez for explanations upon their relations with us, the Prime Minister answered in moderate language, stating the fact that I had required a definitive answer within 20 days upon our claims, and that the Government would make such answer as became the honor and dignity of the nation. In the course of his remarks, however he made several inaccurate statements.

A very great sensation has been produced in Lisbon by this affair; the newspapers are full of it, those of the opposition making it the theme for attacks of every variety upon Count Thomar [1] the Prime Minister, whilst those of the Government are particularly tame in their notices; all are respectful in what they say of our Government, and I believe the general public sentiment is, that we have been trifled with, and ought to be paid.

The Representatives of several of the Powers of Europe have called on me to know something of the state of affairs. I have assured all, that we have been forced into the position we occupy, against our constant desire to settle our claims in an amicable and friendly manner, and that we shall do nothing which is not entirely just. With the English Chargé d'Affaires,[2] I have had two conversations (not official) principally respecting the Armstrong case; in the last which took place yesterday, I informed him that this Government had admitted the law as asserted in the note [3] of Mr Jefferson to the British Minister at Washington, dated the 5th September 1793, (which note I showed him, and suffered him to make a Memo of) and that they had also admitted the fact that they had not *used the means in their power to protect and defend the privateer, for particular reasons*, which they had specified.

I believe there has been an intention to address a circular to the Members of the Diplomatic Corps, calling for their interfearance or mediation, and I have said to some of them, that if it is done, the case [4] of Baron Gros at Athens, ought to make them very cautious in what they do. I also learn confidentially that it is intended to propose to me to pay some of the claims, and to send a Minister, with full powers to negociate respecting the rest, to Washington.

I see my way clearly; I shall reject any proposition which has not for its object the adjustment and settlement of every claim without exception; there has been already enough of negociation, and I believe that they dare not suffer me to go away; if they do, I shall feel easy in the confidence that we have done every thing we could do, consistent with the honor and dignity of the nation, to obtain a fair and just settlement, in a peaceable manner.

In a confidential despatch, also of June 28, 1850, Clay gives this account of a conversation had with the Russian Minister at Lisbon (D.S., 15 Despatches, Portugal, unnumbered):

I have just had a private and confidential conversation with the Russian Minister [5] in a visit he has made me, which I regard as so important that I cannot refrain from giving you its substance.

He commenced by telling me that Count Thomar the Prime Minister is exceedingly anxious to come to a settlement with me, but that the case of the General Armstrong stood most in the way. He asked me if this case was not susceptible of further negociation? I told him, it was not, and explained to him how it had been admitted by the Marquis d'Aguiar in its commencement, and that Count Tojal had lately admitted all the law and facts which were necessary, and that there was therefore nothing to negociate upon. He asked if my last note had fixed amounts? I told him no, but that I was ready when called upon to inform

[1] Antonio Bernardo da Costa Cabral, Conde de Thomar.

[2] Hon. Henry George Howard.

[3] Printed in vol. 2, pp. 265–66.

[4] Papers relevant to this subject are in British and Foreign State Papers, XXXIX, 480–932, *passim;* for a summary account, see *ibid.*, 890–904.

[5] Sergius Lomonossoff.

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them on that point. He said that the proposition to pay a part of the claims and to offer to negociate the residue at Washington, which I refer to in my N° 25, was a device of Tojal, of which the Prime Minister thought but little. That he (the Prime Minister) thought that Tojal had made a mess of the private interview I had with him, on the 20th, that he was incompetent to conduct such an affair, and that he would most likely have gone out of office, were it not for the dislike to make any change at this time in the Ministry. He said that the Prime Minister was most anxious to settle the affair, but that he was in difficulty how to approach me. He asked if I would be willing to name a round sum, without specifying any particular case? I answered that I would; that I had given every evidence of a desire to be perfectly frank with them, and that he might say to the Prime Minister, not as from me, but of his own knowledge, that I would meet any advance half way, and that I would do any thing consistent with the honor of a Minister and of my country to facilitate a friendly settlement.

This is the substance of a long interview, and which you will see the importance of regarding as strictly confidential.

I have now every hope of being able to settle the claims.

On July 1 there was an interview, requested by Thomar and Tojal, between those personages and Clay; the American consular agent, John E. Martin, was present; a signed memorandum of the conversation was an enclosure to the despatch of July 8, 1850 (D.S., 15 Despatches, Portugal, No. 26), as follows:

Memorandum of a private interview at my house this 1st day of July 1850, between Count Thomar, Count Tojal and myself, at which was present Mr J. E. Martin US. Consular Agent.

In the commencement of the interview Count Thomar stated that it was an entirely private and unofficial interview, which they had sought for the purpose of seeing if we could not come to some understanding respecting the claims made by the United States against Portugal. In the first place he stated that he wished me to understand that Portugal did not consider the claims just: but there might be a just claim [1] for the oil, on account of its being a Government ship. He went on to say that he desired to know whether there could not be a seperation of the claims, and whether I would not name a sum which we would consent to receive, on account of the four others, leaving the case of the General Armstrong for further negociation. I replied that my desire had always been to settle the claims amicably, but that I wished him distinctly to understand that I was acting under positive instructions which did not allow me to entertain any proposition which had not for its object the adjustment and settlement of all the claims.

He made some remarks respecting the case of the General Armstrong, referring to the weakness of Portugal in the midst of the other great European nations, and stating that the payment of this claim by Portugal might serve as a precedent to establish the law: in reply I said that it was a law which the United States had long ago recognised, which we had asserted and acted upon in 1793 with Great Britain against our ally France, and in proof of this position I read him Mr Jefferson's letter [2] to Mr Hammond the British Minister; and afterwards gave him a memorandum of the three prizes mentioned in that letter.

He then wished to know whether I would not for his private use fix an amount which we would consent to receive upon all the claims. I informed him that I would do so, but that it was to be considered entirely private and unofficial; that I thought if they wished the amount officially, it would be proper for them to address me a note requesting it. With this he entirely coincided, and I handed him a paper with the amount $211,659.41 [3] written upon it. He asked me if I

[1] The case of the *Miles*.

[2] Of September 5, 1793; see vol. 2, pp. 265–66.

[3] This should have been $223,328.52; the total of the items, cents being omitted, was $223,327.

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would be willing to give separate amounts to each claim: I told him I would, and gave him a paper, a copy of which is appended:[1] I explained to him the deductions I had made in each claim according to what I considered justice. Count Tojal stated that he had made it about one hundred and fifty Contos:[2] but he evidently referred to the five principal claims only.

I shewed to Count Thomar the official copy of our convention[3] lately concluded with Brazil. I also said as he was going away, that I thought we should have no great difficulty about terms.

I also said to these gentlemen, that the United States had always considered the demand made by the Marquis d'Aguiar against Great Britain for indemnity on account of the destruction of the Gen[l] Armstrong as an admission of the justice of the claim.

On July 2 Tojal asked officially for the amount demanded for each claim; and on the same day Clay responded, repeating the figures, which totaled $223,327, including $131,600 in the case of the *General Armstrong* (D.S., 15 Despatches, Portugal, No. 26, July 8, 1850; House Document No. 53, pp. 72–73). Regarding the amounts, Clay wrote thus in his despatch of July 8 (one of the enclosures to that despatch was a list of the vessels of the Portuguese Navy, with a memorandum of the forts on the Tagus):

In these amounts I have obeyed according to my best judgment, that portion of instructions N° 8, which directs me "to demand of the Portuguese Government in every instance the highest amount of damages, which in my judgment a prudent and conscientious man would feel himself justified in asking, if he were prosecuting his own claim"; In the Armstrong case the amount I demand is just the value of the ship and outfit with interest; in this case I have not committed us in such manner to even that amount as would prevent my receding somewhat from it, should I think it advisable: but so far they have made no objection to amounts. In each of the other cases altho' my instructions inform me that interest is always a fair subject of compromise, my sense of what is just would not in any event, permit me to abate one dollar from the sums I have set down.

The answer of the Portuguese Government to Clay's "final note" of June 21 was under date of July 6, 1850; after referring to the recent correspondence, Tojal wrote this offer to pay all the claims according to the sums demanded, except that of the *General Armstrong*, which was to be referred to a third power (D.S., 4 Notes from the Portuguese Legation, translation, enclosed with the note of August 6, 1850; printed in House Document No. 53, pp. 73–77):

The Government of Her Majesty, animated with the same desire which the Government of the United States professes, to maintain without interruption relations of good harmony and intelligence between the two countries, yields to the force of circumstances and without again reverting to the justice or injustice of the claims presented by the Government of the United States, and only *pro bono pacis*, offers to pay the said mentioned claims, amounting to $91,727 according to Mr. Clay's account, with the only exception of that relating to the privateer *General Armstrong*. In respect to this claim, the undersigned cannot deviate from the proposal heretofore made to Mr. Clay—that of so important a claim being submitted to the decision of a third power—and therefore the undersigned will again repeat to Mr. Clay that the Government of Her Majesty is ready to refer the claim of the privateer *General Armstrong* to His Majesty the King of Sweden or to any other power chosen by both Governments. This claim being of so different a nature from the others—for as these latter have only reference to

[1] Not printed.
[2] About $163,000.
[3] Document 134.

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Portugal, that of the privateer *General Armstrong* involves a principle of international law the application of which does not merely regard Portugal but all other nations—the Government of Her Majesty could not appear justified before the country, nor in the estimation of public opinion, were it to satisfy that claim without a recourse to the mode which has been proposed. The undersigned does not think it now necessary to develop all the arguments which, in various notes, he has conclusively proved the injustice of such claim; but he cannot forbear reminding Mr. Clay, that he may repeat it to his Government, that the claim of the privateer *General Armstrong* appeared so weakly grounded to the Government of the United States that after presenting it on the 1st of January 1815, the first note of Mr. Sumter to the Marquis d'Aguiar, it was abandoned by the said Government so far as the 13th of February 1837, which was the first note of Mr. Kavanagh. In addition to this, when, in 1832, claims presented by the United States were adjusted, and for which, according to the convention [1] then concluded between Viscount Santarem and Mr. Brent, $71,000 were paid, the profoundest silence was observed by the United States in respect to this claim of the privateer *General Armstrong*. The contents of the letter [2] the Secretary of State, Mr. Upshur, addressed on the 10th January 1844 to the parties interested in the privateer *General Armstrong*, communicating to them that all arguments were exhausted to persuade Portugal to admit such claim "and that the Government of the United States could see nothing in the circumstance to justify or warrant it in having recourse to any other weapons", which evidently proves that the same American Government of that date perceived no solid foundation to require from the Government of Her Majesty the amount of a claim that the present Government of the United States considers itself justified to obtain in so *peremptory* a manner.

The undersigned does not conceive this to be the proper occasion again to analyze the only argument presented by Mr. Clay to show that the Portuguese Government is responsible for the value of the privateer *General Armstrong;* it will be sufficient to state that the principle of inability in the Portuguese Government to protect the said privateer against the attack of the British squadron under Captain Lloyd, invoked by Mr. Clay to justify his claim, is neither grounded on reason nor justice, nor is it admissible by international public law. The Portuguese authorities, having employed all the means at their disposal to prevent the destruction of the privateer, as is proved by the documents and evidence already produced, were not bound to do more, for no responsibility can attach for the consequences of a fact which it was not possible to prevent. The Government of Her Majesty, desirous to preserve unaltered the relations of friendship which subsist with the Government of the United States and being at the same time disposed never to deny justice where it is due, more than once offered the only decorous and just manner to decide doubtful questions in respect to law and in respect to fact; but the Government of the United States, possibly having but little reliance in the justice of its claims, did not accept arbitration and judged it preferable to decide them by its own arbitration and with threats of employing force against a friendly nation and which cannot repel by force the intended violence against it. In the simple but frank narration of this fact, which is nevertheless important, Mr. Clay will find the answer to the accusation contained in the note he addressed to Her Majesty's Government: of having denied justice in respect to the claims in question. Her Majesty's Government, besides the arguments contained in the notes formerly addressed to the Government of the United States, finds its judgment and the manner of weighing the question of the privateer *General Armstrong* strengthened with the opinion of Her Britannic Majesty's Government, which has always deemed this claim of the Government of the United States unjust. The subsisting relations between Her Most Faithful Majesty's Government and that of Her Britannic Majesty's oblige the undersigned to communicate to the British Government all that has taken place and to cause the prosecution of the claims which were, at one period, presented by the Duke of Palmella to Her Britannic Majesty's Government and which were not followed up, in consequence of the abandonment by the Govern-

[1] Document 72.

[2] Printed in Moore, International Arbitrations, II, 1086–87.

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ment of the United States, for the space of twenty-two years, of the claim of the privateer *General Armstrong*, which gave rise to the belief that this claim was presented on some occasions merely *pro forma*, than through conviction of its justice. These circumstances should also induce Mr. Clay to represent to his Government that it would be flagrant injustice not to separate from the other claims that of the privateer *General Armstrong*, in order to submit it to the decision of a third power chosen by the two Governments.

In view, therefore, of the reasons herein mentioned, which the undersigned trusts will be received by Mr. Clay with a sincere desire to maintain without interruption the relations of perfect intelligence and harmony between the two Governments, the undersigned will conclude by repeating to Mr. Clay the assurance of Her Majesty's Government's compliance to promptly satisfy all the pending claims, with the exception of that relating to the privateer *General Armstrong*, the decision of which, in accordance with the proposal now renewed, should be referred to a third power chosen by both Governments.

Clay answered (July 7) that "the instructions of his government do not allow him to entertain any proposition which has not for its object the adjustment and final settlement of all the said claims without exception"; he therefore declined "to accede to the proposition of his excellency . . . to pay all the other claims except that of the General Armstrong, and to refer it to arbitration" (House Document No. 53, pp. 77–78).

The next note was that of Tojal of July 10 (*ibid.*, 79–80), in which, after referring to the latest communication from Clay, there were these two paragraphs (translation in D.S., 15 Despatches, Portugal, preceding No. 27, of July 23, 1850):

It becomes, then, the painful duty of the undersigned to express to Mr. Clay the deep concern Her Majesty's Government feels at this declaration; under existing circumstances, the aforesaid Government has no other means of obtaining proper justice except by appealing *directly* to the Government of the United States with the same proposition that the undersigned made to Mr. Clay in his note of the 6th instant, in the hope that when Her Majesty's Government shows itself willing to admit, as in fact it has admitted, all the other American claims, a single exception may be allowed in regard to the claim of the owners of the privateer *General Armstrong*, in order that the same may be submitted to the decision of a third power to be selected by mutual consent. The undersigned has been gratified, at the same time, with the assurance conveyed to him in Mr. Clay's note, now under consideration, that it had never come to his knowledge that the Government of the United States had ever used threats of any kind against the Portuguese Government—threats which he, Mr. Clay, had on no occasion employed throughout the whole of his previous correspondence with Her Majesty's Government.

The undersigned has, therefore, the satisfaction of knowing that neither in the message of the President of the United States—that portion of it which relates to the affairs of Portugal—nor in the instructions which Mr. Clay received from his Government directing him to ask for his passports in the event that no definite arrangement should be made in relation to all the claims now pending, was there anything intended to convey the impression that the Government of the United States would employ forcible means against the Portuguese Government in order to accomplish its object.

As in duty bound, Clay then asked for his passports, on July 11, the last of the twenty days fixed (House Document No. 53, pp. 80–81); and on July 13 Tojal wrote his final note, in these terms (translation in D.S., 15 Despatches, Portugal, following the unnumbered despatch of July 18, 1850; printed in House Document No. 53, pp. 81–82):

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The undersigned, Minister and Secretary of State for Foreign Affairs, has had the honor to receive the note which Mr. James Brown Clay, Chargé d'Affaires of the United States of America, addressed him on the 11th instant, asking for his passports with a view of returning to the United States.

Mr. Clay has decided upon taking this extraordinary step in consequence of the Portuguese Government's adhering resolutely to its proposition to submit the claim of the privateer *General Armstrong* to the decision of a third power which shall be selected by both Governments. Mr. Clay has found nothing worthy of his consideration in the remarks made by Her Majesty's Government when it endeavored to show the justice of its course in proposing to pay all the claims that have been presented, according to Mr. Clay's account and upon the terms expressed in the note which the undersigned had the honor of addressing him on the 6th instant, with the *sole exception* of the aforesaid claim of the privateer *General Armstrong*—not for the purpose of avoiding payment of the same, if due, but in order to submit it to the decision of a third power, because there is a principle of international law involved in this claim which cannot be altered at the mere option of any government.

The undersigned cannot avoid expressing to Mr. Clay the regret experienced by Her Majesty's Government on receiving the note in which the representative of the Government of the United States makes so formal a demand for his passports—a government whose friendship Portugal has preserved unaltered throughout all times and which, even now, she was so desirous to maintain that she did not hesitate in showing herself ready to pay all the claims that had been presented, with the exception only of that particular one concerning the privateer *General Armstrong*, for reasons already explained.

No government can pretend to *infallibility* in regard to its own opinions; and when a question presents itself between two friendly governments, otherwise involving differences of opinion as to points of fact and of law, it must be acknowledged that a refusal to submit the matter to *arbitration*, as proposed by the weakest party, is calculated to produce the impression that there are doubts as to the justice of the claim presented by the strongest.

The undersigned entertains no doubt as to the truth of what Mr. Clay has stated in his note in reference to his Government's being perfectly convinced of the justice of the claims that have been presented; but, inasmuch as the Portuguese Government is equally convinced of the rectitude of its course in having always resisted the claim of the privateer *General Armstrong*, the dictates of justice and of reason forbid the rejection of the only impartial and honorable means within reach for setting this grave question at rest.

In compliance with Mr. Clay's request, the undersigned, although seriously grieved at the occurrence, has the honor of enclosing to him his passports, Mr. Clay being, nevertheless, at perfect liberty to continue his residence in Portugal as long as he shall deem it either convenient or agreeable. The undersigned avails himself of this opportunity to renew to Mr. James Brown Clay the assurances of his most distinguished consideration.

An unnumbered despatch of Clay of July 18, 1850, includes a summary account, neither complete nor wholly accurate, of the negotiations (D.S., 15 Despatches, Portugal; that despatch, with "the books and papers of the legation relating to the claims upon Portugal", was brought to Washington by Lieutenant Percival Drayton, U.S.N., as bearer of despatches). Because of what he deemed the "virtual protest" of the Portuguese offer of July 6, Clay did not "conceive that he [the President] will for a moment entertain such proposition" (*ibid.*); except for that, Clay considered the proposition a fair one (see the correspondence regarding the proposal that Clay return to Lisbon, which he did not do; Webster to Clay, August 23 and November 5, 1850, in D.S., 14 Instructions, Portugal, 142–44; Clay to Webster, September 21 and December 9, 1850, in D.S., 15 Despatches, Portugal).

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On July 19 Clay took leave of Tojal; the conversation then had regarding the claims is thus reported (*ibid.*, No. 27, July 23, 1850):

> I had some conversation with him on this occasion, in the course of which he stated that the Ministry had been obliged to make the proposition to pay some of our claims *under a protest*, as they had done, out of deference to the judicial authorities who had decided against them, altho' they (the Ministry) had wished to pay some two of them without protest. He expressly stated that he had always taken a different view of the claim of the "Miles", from that entertained by his predecessors; that he thought, that as the proceeds of the oil was applied to the use of the Government, in refitting its Ship, the Government was liable, and ought to repay it, and that he had also wished to pay the James Hall claim, but that the Council of State had decided otherwise, and the Ministry could not take the responsibility to pay, against their decision.

On the same day Clay, "in full uniform", embarked on the *Independence*, the flagship of Commodore Morgan (*ibid.*); he went by the Mediterranean to Geneva and Paris and was again in Washington by the following December.

During the course of the final exchanges at Lisbon, De Figanière e Morão wrote at Washington (July 9) a note discussing the facts and, more particularly, the law in the case of the *General Armstrong;* it is that note which is deemed by Judge Moore to contain "the most impressive presentation" of the view of Portugal on the question of neutral obligation (International Arbitrations, II, 1115–16); the offer of arbitration was therein renewed in these words (D.S., 4 Notes from the Portuguese Legation):

> In conclusion, notwithstanding all that the Undersigned has here submitted, for the consideration of the American Government, he begs to state, most distinctly, that he is instructed to repeat the offer, heretofore made, to submit this question, either alone or in connection with all or any of the other matters in dispute between the two Governments, to the decision of third parties mutually chosen.

The British Government took a deep interest in the American claims on Portugal, particularly the case of the *General Armstrong*, and in the negotiations regarding their settlement. Correspondence on the subject between the Foreign Office and the diplomatic representatives of Great Britain at Lisbon and Washington was extensive; for example, during the period from June 14 to July 28, 1850, Sir Henry Lytton Bulwer, British Minister at Washington, wrote eight despatches regarding the negotiations (Library of Congress, facsimiles from the Public Record Office, London, F.O. 5:513, *passim*). Bulwer advised with De Figanière e Morão; he conversed with Secretary of State Clayton, President Fillmore, and others; at a late stage of the negotiations during the Taylor administration he wrote that Clayton had "agreed to refer all the United States Claims on Portugal, to arbitration without reference to Congress, if the claimants themselves agree to this arrangement" (*ibid.*, No. 114, June 17, 1850); and at the request of De Figanière e Morão he sent to London a copy of the note of the latter of July 9, 1850 (cited above).

President Taylor died during the evening of July 9, 1850; Millard Fillmore took the oath of office on July 10. Some weeks elapsed,

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of course, before that change of administration was known at Lisbon. Daniel Webster took over the duties of the office of Secretary of State on July 23. From the date when Clay took leave at Lisbon (July 19), there was no diplomatic representative of the United States at that capital until Charles B. Haddock,[1] who had been commissioned Chargé d'Affaires on December 10, 1850, presented his credentials on June 17, 1851.

On the eve of his retirement from office, Secretary of State Clayton wrote the following letter regarding the Portuguese claims, dated July 20, 1850, and obviously addressed to President Fillmore (Library of Congress, 9 Clayton Papers, 1771):

As this is the last day, I shall remain at the head of this Department and as I have had no opportunity of conversing with the gentleman who is to be my successor since I came into office, I think it my duty to the Country to communicate with you on a single subject comprizing the only matter of interest arising out of our Foreign relations which can cause any embarrassment to this Government.

What I wish to say relates to Portugal. Mr. Clay the present Chargé d'Affaires at Lisbon will undoubtedly soon return to the United States.

The decision of President Taylor in regard to Portugal was announced in his annual message. Before however sending the claims to Congress he resolved to exhaust every effort of honorable diplomacy. Mr. Clay has done this I have no doubt.

The claims stand supported by the report of every Minister we have had at Lisbon. President Taylor had decided that upon the return of Mr. Clay, which may be now soon expected he would present the claims to Congress with an assurance that he would faithfully execute any measure they might adopt to Compel the payment of the just claims.

That of Com: Stewart & the Crew of the Constitution for the Capture of the Levant by the English in the harbor of Porto Praya was among the number, which would have been laid before Congress.[2]

The late President would not have arbitrated these questions unless Congress had directed him to do so.

His object was not merely to obtain indemnity for the past but security for the future. I recommend you to obtain from Geo. W. Hopkins Esqr formerly Chargé d'Affaires to Portugal a full report upon all the Claims. He understands the subject better than any other man I have seen. I think the honor of the Country would be deeply implicated, after all General Taylor has done by an abandonment of the claims or by anything which could be construed into a re-

[1] Frequently misspelled "Hadduck", both in official and unofficial writings.

[2] No mention of any claim against Portugal in the case of the *Levant* has been found in the instructions, despatches, or diplomatic correspondence. The *Cyane* and the *Levant*, British vessels of war, were captured by the U.S. frigate *Constitution*, Captain Charles Stewart, U.S.N., after an action near Cape St. Vincent, on February 20, 1815. This was three days after the exchange of ratifications of the Treaty of Ghent (Document 33). The two prizes were taken with the *Constitution* into Porto Praia, a port of São Thiago (Santiago), the largest of the Cape Verde Islands, on March 10, 1815. On the following day the *Constitution* and her two prizes left that port because of the approach of a British squadron of three frigates. After a chase in which the *Constitution* and the *Cyane* successfully eluded pursuit, the *Levant* returned to the harbor and was there recaptured by the British squadron with the aid of British prisoners on shore (see Lossing, Pictorial Field-Book of the War of 1812, 983–85). A joint resolution of February 22, 1816, provided for the presentation of medals to Captain Stewart and the officers of the *Constitution* (3 Statutes at Large, 341); and by the act of April 26, 1816, the sum of $25,000 was appropriated for distribution as prize money to Captain Stewart, his officers, and crew, "for the capture of the British sloop of war Levant" (*ibid.*, 301).

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treat from the position he assumed. Mr. Figaniere has behaved very badly in regard to the whole business.

I have written these few lines in consequence of your suggestion at our last interview.

The Concluding Negotiations

On August 6, 1850, De Figanière e Morão, referring to the notes written at Lisbon on the previous July 2, 6, and 7, requested Secretary of State Webster to "inform him of the present views the Government of the United States entertain", in order that he might communicate them to his Government (D.S., 4 Notes from the Portuguese Legation). The answer (August 10) was to the effect that despatches[1] from Clay had just been received and that as soon as these and their accompaniments had been perused, Webster would either converse with the Portuguese Minister or write to him (D.S., 6 Notes to the Portuguese Legation, 114).

There followed (August 14) a conference, of which there is this "approved written statement" by De Figanière e Morão (D.S., 4 Notes from the Portuguese Legation):

Interview, by appointment at the Department of State, between Mr Webster & Mr de Figanière; Wednesday 14 Aug. 1850, at about noon

Mr W. Well Mr de F, sit down & let us talk.

" De F. I have nothing to say, Mr W, but will listen to you with pleasure & attention.

" W: Have you no proposition to make?

" De F: Mr. W. do you ask me that question with the intention of attending to any proposition I might make, or have you already come to a resolution?

" W: Yes, I have come to the conclusion, that, as your Government has offered to pay the small claims, & leave the "Armstrong" to arbitration, we may as well settle it that way: this is my personal opinion, but have not had time to confer with the President—The arbitrator to be agreed to hereafter.

" De F: Well, Sir; as you have come to that resolution, it is quite unecessary for me to make any proposal, which, however, I was prepared to submit, as I do not think the Government of the US should insist upon the payment of the claims, the justice of which is denied by Portugal, and the offer of payment having been made under protest: it appears to me, that all the claims ought to be submitted to arbitration, as first proposed by Portugal. I am not ordered to say this, but I put it to your own sense of right.

Mr W: I do not see that I should be justified in not accepting what Portugal offers. Congress presses for these papers, and I wish to terminate the affair with all dispatch.

de F: Very well, Mr W; I will thank you to commit to paper the substance of what you have said, & I'll communicate it to my Govern[t]

" W: I will do so immediately, in two or three days, so soon as the Cabinet is full: but, how shall we come to a conclusion?

de F: I suppose you will cause it to be followed by a new Minister to Lisbon.

" W: Of course: for I am very amicably disposed towards Portugal.

How is it that your Government wishes us to look to England for the loss of the "Armstrong"? They were our enemies, took us in a neutral Port, and from the neutral must we seek for redress.

de F: If England captured the "Armstrong" contrary to the usages of war, you should have required indemnity at the conferences preceeding the Treaty of Ghent. Besides, the Neutral is not bound, taking the facts and the law into consideration, to make any such indemnity, if it maintained its neutral attitude. Have you, perchance, read my communication of 9th July, wherein, I flatter myself, to have conclusively shown the real points of this case?

[1] Seemingly the unnumbered despatch of July 18, 1850, cited above.

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Mr W: No: I could not look into all; but have a knowledge of the late transactions in Lisbon.

de F: Well, Sir; I pray you to see that Note, as well as the one of 18th same month, in relation to the "Magoun", the slave case.

" W: I will do so.

de F: I beg to say, that I am instructed by my Government to press the claims of Portugal upon the attention of this Government, in the case of the "Susan", & the Piracies under the Flag of Artigas.

" W: They shall be attended to, with all consideration.

Mr W then rose, saying, he was going to get the notes I had mentioned, and I took my leave.

The definitive decision to accept the Portuguese proposal of July 6, 1850, was taken by August 23 and was communicated to De Figanière e Morão by this note of Webster of September 5, 1850 (D.S., 6 Notes to the Portuguese Legation, 115–17):

On the 7th ultº, the Undersigned had the honor to receive, from Mr de Figanière, a letter, under date of the day previous, communicating, to the Undersigned, translations of the last two notes addressed, by His Excy Count Tojal, Her Majesty's Minister & Secretary of State for foreign affairs, to Mr James B. Clay, Chargé d'Affaires of the U.S. in Lisbon, on the 2nd & 6th July last; and, requesting the Undersigned to inform him of the present views of the Government of the United States in respect to the actual state of the important questions, referred to in those notes, taken in connection with the replies of Mr Clay, of the 2nd & 7th of the same month, in order that he may be able to communicate them to his Government, as he is directed to do, by the earliest opportunity.

Since the receipt of Mr de Figanière's note despatches from Mr Clay have reached this Department, bearing dates, up to the time when he quitted Lisbon. These various papers have been submitted to the President, for his consideration.

In his note of the 6th July to Mr Clay, in reply to one from the latter, of the 2nd of that month, communicating, by request, the amounts of the several claims of citizens of the United States against Portugal, Count Tojal makes the following offer, on the part of his Government.

"The Government of Her Majesty", he says, "animated with the same desire, "which the Government of the United States professes, to maintain without "interruption relations of good harmony & intelligence between the two coun- "tries, yields to the force of circumstances, & without again reverting to the justice "or injustice of the claims presented by the Government of the United States, & "only *pro bono pacis*, offers to pay the said-mentioned claims, amounting to "$91,727—, according to Mr Clay's account, with the only exception of that "relating to the privateer "*General Armstrong*";

"In respect to this claim", Count Tojal proceeds to say that, "the Under- "signed cannot deviate from the proposal heretofore made to Mr Clay;—that of so "important a claim being submitted to the decision of a third power, & therefore "the Undersigned will again repeat to Mr Clay, that the Government of Her "Majesty is ready, to refer the claim of the Privateer "General Armstrong" to "His Majesty the King of Sweden, or to any other power chosen by both Govern- "ments."

The President instructs me, now, to say that, sincerely wishing to preserve relations of amity with Portugal, & to bring pending questions to an immediate close, the Government of the United States accepts Count Tojal's offer, in behalf of his Government, to pay the several claims, as stated in Mr Clay's note, & the proposition made by the same authority to refer the case of the "General Armstrong" to arbitration. His Excellency, Count Tojal, on the behalf of his Government, proposes His Majesty, the King of Sweden, or some other power to be agreed on, as arbiter on this case, between the two powers. While the Government of the United States does not wish to make any objection to the King of Sweden, as Arbiter, it nevertheless, on its part, proposes the President of the French Republic. And the choice between these two personages may be decided when a proper convention shall be drawn up for carrying the understanding of the parties into effect.

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A letter [1] was addressed, by this Department, to Mr Clay, on the 23rd ult°, which will probably reach him in Paris, on or before the middle of this month, acquainting him with the acceptance, by the President, of the proposition made to him by your Government & inquiring whether it would be convenient & agreeable to him to return to Lisbon for the purpose of concluding the proposed arrangement.

Recurring again to the vast importance of a prompt adjustment of these questions, the Undersigned has the honor to renew to Mr de Figanière the assurances of his distinguished consideration.

The last relevant note written prior to the signature of the convention was that of September 9, 1850, wherein De Figanière e Morão, after setting forth the substance of Webster's note of September 5, wrote (D.S., 4 Notes from the Portuguese Legation):

In reply, the Minister of Portugal begs to inform the Honble Secretary of State, that he will, without delay, transmit to his Government the copy of Mr Webster's communication; but, while doing so, he may be permitted to express his own regret, that the present administration of the Federal Government should think itself precluded—it would appear—from agreeing to discriminately modify a proposition which peculiar circumstances, under a preceeding administration—mentioned at length in Count Tojal's said note—compelled the Undersigned's Government to make, of paying all that was demanded, without reference to the justice or injustice of said several claims, and their respective amount.

The Undersigned had hoped, also—but in which he is, likewise, disappointed—that his communication [2] of the 9th of July last, addressed to Mr Webster's predecessor, in relation to the "Gl Armstrong", (and to which the Minister of Portugal called the Honble Secretary of State's attention, at their conference of the 14th ult°) would have led the American Government to perceive the invalidity of that claim, rendering its reference to an arbiter unecessary.

While arbitration and payment had thus been agreed on, as proposed by the Government of Portugal on July 6, 1850, the detailed terms remained to be written in a convention; at which capital this would be done was uncertain; Haddock, successor of Clay as Chargé d'Affaires at Lisbon, delayed departure for his post, and the relevant papers were retained at Washington (D.S., 14 Instructions, Portugal, 146–47, January 7, 1851); the full power of De Figanière e Morão was dated January 14, 1851, and that instrument could hardly have been received at Washington more than a few days before "agreement . . . as to the terms of a Convention" was reached on February 24 (*ibid.*, 147–48).

In the treaty file is a draft of the convention (in English only), written, it seems, by a clerk of the Department of State and the same scrivener who wrote both versions of the signed convention. This draft, including alterations made therein, most of them in the same handwriting but one or two perhaps in the writing of De Figanière e Morão, corresponds in wording with the English version of the convention as signed. The alterations, which are not numerous, have to do for the most part with the phrasing of the preamble and of Article 1. The only change which need be noticed is that regarding the distribution of the indemnity among the claimants, which was to have been made by this Government "as it may consider just"

[1] D.S., 14 Instructions, Portugal, 142.

[2] Cited and quoted in part above.

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(final words of Article 1); the quoted words were stricken out, and the concluding phrase of Article 4 was added so as to make it clear that the respective amounts of the claims to be paid were those previously stated in the diplomatic correspondence.

The "General Armstrong"

The following statement of the facts in the case of the brig *General Armstrong* is excerpted from Moore, International Arbitrations, II, 1071–79:

About noon on the 26th of September 1814 the brig *General Armstrong*, an American privateer, Samuel C. Reid, commander, having seven guns and a crew of ninety men, put into the port of Fayal, in the Azores, within the jurisdiction of Portugal. The object of the brig's entrance was to obtain a supply of fresh water, and for that purpose the governor of the islands, Elias José Ribeiro, readily granted permission, at the same time ordering the privateer to depart before noon of the following day. The crew were therefore employed during the afternoon in taking in fresh water, when, between the hours of 7 and 8 o'clock, as the sun was setting, a British squadron, consisting of the 74-gun ship *Plantagenet*, Capt. Robert Lloyd, the 38-gun frigate *Rota*, Capt. Philip Somerville, and the 18-gun brig-sloop *Carnation*, Capt. George Bentham, appeared in the roads. Of these vessels the *Carnation* was the first to enter the port. She anchored within pistol shot of the privateer, and was soon followed by the *Plantagenet* and *Rota*. Escape being thus rendered impracticable, Captain Reid deemed it prudent to remain quiet, relying on the protection of a neutral port. His suspicions were however soon aroused by the exchange of signals between the ships, and in apprehension of an attack he cleared for action and ordered the privateer to be warped inshore, close under the guns of the castle. While he was thus employed he saw four boats approaching "well manned and apparently as well armed." Believing that they intended to board the brig, he hailed them and warned them to keep off, but as they continued on their course he ordered his men to fire, which they did, killing and wounding a number of the men in the boats. On the privateer a seaman was killed and the first lieutenant wounded. In his account of the affair, on which the foregoing narrative is based, Captain Reid states that the enemy, having met with a "warmer reception" than they expected, "soon cried out for quarters and hauled off."

Governor Ribeiro did not witness what had taken place; but soon after 9 o'clock in the evening he received a communication from Mr. Dabney, the American consul at Fayal, stating that an attempt had been made by "four or five armed boats to surprise and carry off" the privateer; that the boats had been repulsed, but that a new and more formidable attack was feared. "I therefore pray your excellency," said Mr. Dabney, "to protect this American vessel, as far as possible, either by force or by representations to the British commanders, to the effect that they should abstain from a conduct so reprehensible; and I also pray your excellency to allow the Americans on shore to go on board to aid in the defense of the said vessel in a contest so unequal, if the English should persist in attacking the vessel again." Governor Ribeiro refused to allow the force of the privateer to be increased, but he at once wrote to the commander of the British squadron, requesting him to abstain from any hostilities. He then repaired to the castle, where, as he reported to his government, he "learned that a boat had been sent from the British ships of war to examine the privateer, and on its return three others had been sent armed; and that, the captain of the privateer not wishing to allow them to come on board of his vessel, a fire was begun on both sides, the result of which was that the second officer of the privateer was wounded, and two English were killed and seven wounded." He then considered the affair terminated, and supposed his letter would receive the attention of the British commander. But about 11 o'clock he perceived by the light of the moon that the latter was "preparing new attacks and insults." About ten minutes past 12 o'clock a great number of boats, of which he could count twelve, attacked the privateer and a fight ensued, lasting twenty-eight minutes. The British forces, numbering about

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three hundred men, were "almost entirely destroyed." The British consul told him that the loss in killed and wounded amounted to a hundred and sixteen men, and it was generally believed to have been greater. He himself saw three of the boats without a single person in them. The total loss on the privateer was two killed and seven wounded.

Ten minutes after the fight was ended Governor Ribeiro received from the commander of the British squadron a note, which, though it did not mention the former's communication, evidently was written in reply to it. In this note the British commander declared that one of the boats of the *Plantagenet* "was, without the slightest provocation, fired on by the American schooner *General Armstrong*, in consequence of which two men were killed and seven wounded;" that "the neutrality of the port," which he had "determined to respect," had thereby been violated; that "in consequence of this outrage" he was "determined to take possession" of the vessel, and that he hoped the governor would order the forts "to protect the force employed for that purpose." At 1 o'clock on the morning of September 27 Governor Ribeiro answered that, from the accounts which he had received, the British boats made the first attack, and that the commander of the British forces should give public evidence of the good understanding existing between his sovereign and the Prince Regent of Portugal by putting an end to the hostilities begun at 8 o'clock on the preceding evening. At 2 o'clock in the morning Governor Ribeiro, no response to this letter having been received, wrote again, asking the British commander "to suspend hostilities" till he should have had a conference with him on the subject. He received a reply through the British consul to the effect that, as the Americans had been "the first to violate the neutrality" of the port, the commander of the British squadron would "send a brig to fire on the American schooner," and that if this brig "should encounter any hostilities from the castle," or the governor "should allow the masts to be taken from that schooner," he would "regard the island as an enemy" and "would treat the town and castle accordingly." Pursuant to this threat, an attack upon the privateer was begun at a quarter past 6 by the *Carnation*. At first it was repulsed, but Captain Reid, who had been informed by Mr. Dabney of the purport of the British commander's communication to Governor Ribeiro, perceived that further resistance was useless, and at half past 7, having scuttled the privateer, he and his crew went ashore, taking with them their baggage and part of the ship's provisions and rigging. At 8 o'clock the *Carnation* returned, and after cannonading the privateer, which was then fast on the rocks, for a quarter of an hour, sent boats to sack and burn her. At 9 o'clock her destruction was practically complete. On land some houses were damaged and three persons wounded by the British fire.

Such, in substance, was the report of Governor Ribeiro, made to his government on the 28th of December, of what he described as "a horrible and bloody combat, occasioned by the madness, pride, and haughtiness of an insolent British officer, who would not respect the neutrality maintained by Portugal in the existing contest between His Britannic Majesty and the United States of America."

The report of Mr. Dabney, made to his own government October 5, 1814, was to the same effect. "In the face of the testimony of all Fayal and a number of respectable strangers who happened to be in this place at the moment, the British commander," said Mr. Dabney, "endeavors to throw the odium of this transaction on the American captain, Reid, alleging that he sent the boats merely to reconnoiter the brig, and without any hostile intentions. The pilots of the port did inform them of the privateer the moment they entered the port. To reconnoiter an enemy's vessel in a friendly port at night with four boats, carrying, by the best accounts, one hundred and twenty men, is certainly a strange proceeding."

. . . . . .

We have seen that Mr. Dabney, in his first communication to Governor Ribeiro, requested him to protect the privateer "as far as possible, either by force, or by representations to the British commanders." In his report of the 5th of October he stated that the governor, "indignant at what had passed, but feeling himself totally unable, with the slender means he possessed, to resist such a force" as that of the British, "took the part of remonstrating, which he did in forcible but respectful terms." Governor Ribeiro, in his report of the 28th of September, said that although he was "perfectly aware that force should be repelled by force," and that this was "permitted by right," yet "the unfortunate

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and miserable condition" of the island's defenses prevented him from protecting its neutrality by arms. On the 27th of September Captain Reid protested "against the Government of Portugal for their inability to defend the neutrality of this their port and harbor," and for the resulting loss of the privateer. It was conceded on all sides that the authorities of the island were not in a position to make effective resistance to the force of the British squadron, not only because the number of soldiers on the island was small, but also because the artillery in the castle of Santa Cruz and the other forts was in a ruinous condition.

The case of the *General Armstrong* had a long history which is recounted in the volume last cited at pages 1071–1132; in that work of Judge Moore are treated the negotiations and other discussions, the arbitration had under Articles 2 and 3 of this convention, and the subsequent proceedings in Congress and elsewhere; the text of the award of Louis Napoleon, President of the French Republic, dated November 30, 1852, declaring that the claim "has no foundation" is there printed, with a translation thereof (the original of that award is in the treaty file); and there is included a learned examination of the "important question of public law involved in the case".

The amount of the claim, as finally presented (on July 2, 1850) to the Government of Portugal prior to this convention, was $131,600; Clay wrote (despatch of July 8, 1850, cited above) that this was "just the value of the ship and outfit with interest"; the valuation taken for the brig and outfit was $47,000, to which was added interest for thirty-six years at 5 percent.

On the matter of the amount, Clay had written in his cited despatch of January 29, 1850 (No. 9), as follows:

> Several of the claims contain items which I do not think we can justly insist upon; for instance in the Genl Armstrong claim, as stated in the dispatch of Mr Kavanagh to Mr Forsyth of the 4th Sep^{t} 1837, an item is made, of $50000.00 "for reasonable profits which were to have been expected from the cruise". . . . It seems to me that in the case of the Armstrong we ought to be satisfied with the value of the vessel and outfit with interest; but I am again at a loss to know, according to what rate the interest ought to be calculated.

In a letter to the Secretary of State dated January 21, 1850 (copy in the claims papers), Samuel C. Reid, Jr., as agent of the claimants, wrote that the account sent by him to Clay of the sum to be demanded came to $215,600, with interest at 5 percent for thirty-five years, amounting in all (according to the letter) to $564,400.

It appears that the *General Armstrong* was built in France as a corvette of fourteen 16-pounders and that she was "stripped to the wales" and refitted at Charleston prior to her first sailing as a privateer on December 24, 1812 (print published by John Sinclair; D.S., Prize Cases, Miscellaneous, privateer *General Armstrong*). It was during her second cruise that the *General Armstrong* was destroyed. In December 1814 the agents of the vessel wrote to the Secretary of State that her cost and outfit at the time that cruise began amounted to $30,000 (Moore, *op. cit.*, 1079).

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The Other Claims

The claims, other than that of the *General Armstrong*, which, by the convention, were to be paid, were those which had been "presented, previous to the 6th day of July, 1850, in behalf of American citizens, by the Government of the United States" (Article 4); these were nine in number, in amounts "in accordance with the correspondence between the two Governments", totaling $91,727, as follows (D.S., 15 Despatches, Portugal, No. 26, July 8, 1850, enclosed note of July 2, 1850):

James Hall (ship *Shepard*)	$23,171.00
Ship *Miles*	42,098.00
Brig *Magoun*	12,000.00
Carlos Dupuy (passenger on the *Magoun*)	2,606.00
Officers and crew of the *Magoun*	2,688.00
Schooner *Col. Blum*	8,911.00
Whaleship *Bolton*	200.00
Brig *Long Island*	21.00
Ship *Ganges*	32.00
Total	$91,727.00

The facts and proceedings which gave rise to those nine claims will be summarized, with occasional specific citation, from the instructions, despatches, and other papers, some of which are in D.S., Portuguese Claims, Miscellaneous, ship *Shepard*, ship *Miles*, brig *Magoun*, and schooner *Col. Blum*.

JAMES HALL

James Hall had presented his case verbally to Secretary of State Livingston in March 1832; under date of August 29, 1832, a memorial of Hall, addressed to the President, with a covering letter of the same date, was submitted. Copies of those papers were sent with an instruction to Thomas L. L. Brent, Chargé d'Affaires at Lisbon, of September 18, 1832 (D.S., 13 Instructions, U.S. Ministers, 322; see also 14 Instructions, Portugal, 1–3, April 18, 1833); and there was correspondence at Lisbon (see D.S., 11 Despatches, Portugal, No. 196, December 6, 1832; No. 199, February 23, 1833, and enclosures K, L, M, and N; 12 *ibid.*, No. 201, May 7, 1833, and enclosures S1 and S2; and No. 202, June 15, 1833, and enclosures A and H); but during this period the judicial and executive proceedings in the litigation begun at Lisbon had not terminated.

The ship *Shepard*, of New York, James Hall, master and part owner, arrived at Lisbon from Antwerp on January 28, 1828; Hall had on board 10,089 Spanish dollars, brought from Antwerp, the proceeds of the sale of cargo there. On February 17, as the *Shepard* was about to sail for Habana with a cargo of salt laden at Lisbon, officials of the customs at that port took the coin from the ship; it became the subject of forfeiture proceedings brought by an informer (entitled to one third of the proceeds if successful) and based on the false allegation that the dollars had been smuggled on board at Lisbon and were thus being exported contrary to law; the dollars

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were not included in the ship's manifest, as they should have been according to an enactment of 1785, which, however, had long been a dead letter.

At the trial, judgment went for Hall (November 28, 1828), which was reversed on appeal (August 8, 1829); but a further appeal by Hall was successful, the first judgment was affirmed, and the money was ordered restored to him (June 9, 1831). After all requisite proceedings for the execution of this last judgment had been completed, the fund was detained by order of the Minister of the Interior (February 20, 1832); on April 22, 1833, a decree granting "Graça Especialissima" by the Monarch, Dom Miguel, ordered, in favor of the informer, a revision of the case; it seems that such a decree, as an act of the Sovereign, was at the time lawful, although its effect was to open a judgment otherwise final; and while the rule of Dom Miguel ended soon thereafter, the case was, pursuant to his decree, reviewed by a tribunal of five judges under the Government of Queen Maria II. Final sentence of forfeiture of the dollars was given by that court on June 10, 1834 (one judge dissenting and another dissenting in part), for these reasons, as set forth by Edward Kavanagh, successor of Brent as Chargé d'Affaires at Lisbon (D.S., 13 Despatches, Portugal, No. 65, April 6, 1838):

1º Because, (even supposing that they were imported from Antwerp as was alleged by Capt. Hall), it was an admitted fact that no mention was made of them in the manifest presented on the entry of his vessel at the custom-house; and that, consequently, the forfeiture was incurred by virtue of the Law of October 20th 1785.

2º Because, however contradictory some of the evidence in regard to the dollars having been smuggled from the City of Lisbon, there was sufficient to warrent their condemnation for that cause.

Kavanagh had presented his credentials at Lisbon on July 25, 1835, and had urged the claim of Hall "with unremitting zeal" (*ibid.*); some twenty-five of his despatches prior to that last cited deal with the case of Hall, which was one "of the two remaining unadjusted claims of our Citizens", the other being the case of the *General Armstrong* (*ibid.*, No. 52, September 4, 1837); but the Government of Portugal had more than once definitely rejected the claim; the latest occasion of rejection was the subject of Kavanagh's cited despatch of April 6, 1838; therewith he enclosed a translation of the report of the Attorney General of the Crown, dated February 28, 1838, which, as Kavanagh wrote, "sustains the jurisdiction of the Court which rendered the final judgment in 1834; and decides that it had rightful cognizance of the case, and that there was no irregularity in any of its proceedings"; and in view of the discussions already had, Kavanagh renewed his previous request for further instructions.

Such instructions from Secretary of State Forsyth followed (May 21, 1838), and Kavanagh accordingly began a new correspondence at Lisbon, in which the former arguments were restated on both sides. Those few exchanges ended with the unfavorable answer of the Portuguese Government dated February 24, 1843, which Washington Barrow, the successor of Kavanagh as Chargé d'Affaires at

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Lisbon, referred to his Government (D.S., 14 Despatches, Portugal, No. 15, March 20, 1843, and enclosures).

Diplomatic discussions lapsed for some years; the attention of the Department of State was recalled to the claim of Hall by despatches of George W. Hopkins, Chargé d'Affaires at Lisbon, of June 29, 1848, and February 9, 1849 (D.S., 15 Despatches, Portugal, Nos. 8 and 14), in the former of which the case is reviewed at length. The negotiations from 1849 to the signing of this convention have been hereinbefore considered; it can hardly be said that anything new was then written in respect of the merits of the case of James Hall (see House Document No. 53, pp. 92–97, 117–27).

The amount of the claim, as fixed by the convention, was the sum taken from the ship, $10,089, with interest from 1828, in all $23,171.

THE "MILES"

The case of the *Miles* was first brought to the attention of the Department of State by a letter of H. G. O. Colby, enclosing supporting papers, dated at New Bedford on July 20, 1843. The amount of the claim was therein stated at about $80,000, and it was said that certain insurance offices were interested. The papers in the case were transmitted by Secretary of State Upshur to Abraham Rencher, Chargé d'Affaires at Lisbon, with an instruction of October 18, 1843 (D.S., 14 Instructions, Portugal, 82). The claim was first presented to the Government of Portugal by a note of Rencher dated September 1, 1844, which was answered by the Portuguese Minister and Secretary of State for Foreign Affairs, José Joaquim Gomes de Castro, on April 21, 1845 (copies of these two notes are not available); the claim was then in large part, though not wholly, rejected by the Portuguese Government. In a despatch of November 8, 1847, Rencher, who had been succeeded by George W. Hopkins as Chargé d'Affaires at Lisbon, wrote regarding the case of the *Miles* as follows (D.S., 14 Despatches, Portugal, No. 33):

> The most important claim committed to my charge was that of the owners, officers, and seamen of the American Ship "*Miles*", which owing to the unsettled state of this country and the dilatory manner of doing business here, I have not been able to bring to a successful termination. In the note of Counsellor de Castro, Secretary of State, in answer to one from me presenting the claim, he admitted the justice of some parts of it, but desired further time to enable the Government to take testimony as to the *amount*. This was to be done at Mosambique and other points. Before he was able to obtain this testimony he was driven from power by the revolution of May 1846. Since that time there has been such a succession of changes and vacancies in the Foreign Office that I have found it impossible to progress with the claim. In the note of Senr de Castro there is an elaborate argument against the largest amount of the claim, to wit, the Cargo of Oil. The note was accompanied by an immense mass of testimony on the part of the Portuguese Government. A copy of this note was transmitted to the agent of the claimants at New Bedford, that he might furnish additional testimony if in his power. No additional testimony has been furnished, but their agent here, A. T. Donnet Esq., filed in the legation a very sensible additional argument in support of the claim. Understanding, as I did, the whole claim, I thought I might relieve my successor from much difficulty and embarrassment on account of the Portuguese language, and perhaps somewhat expedite the claim, if before quitting the legation I should submit a general argument, upon the

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disputed points in Senr de Castro's note, without waiting longer for the additional note which had been promised me upon the points partially admitted. Mr Hopkins concurred in this view, and I herewith submit for your consideration a copy of my answer to the arguments contained in Mr. de Castro's note. The answer is based upon the testimony submitted by the claimants, as well as that furnished by the Portuguese Government. I hope you will find it, what I wished it to be, a complete answer upon all the points in dispute. It is, in my opinion, a fair statement of the whole case, and I transmit a copy of it to the Department in the hope that it may aid you in any future action which may become necessary in the prosecution of this just claim.

The enclosure referred to in the foregoing despatch of Rencher was a note addressed by him to the Portuguese Minister and Secretary of State for Foreign Affairs, Joaquim António Velez Barreiros, Barão da Luz, under date of October 22, 1847 (*ibid.*, enclosure). Therein the facts in the case of the *Miles* are recounted at some length, with a reasoned argument on the law, supported by citation of various authorities. Excerpts from that note follow (printed in full in House Document No. 53, pp. 127–32; later correspondence is also in *ibid.*, 132–39, ending with the note of Clay of April 13, 1850; see also Senate Executive Document No. 64, 30th Congress, 1st session, serial 509):

The undersigned Chargé d'Affaires of the United States of America, in answer to the note directed to him by His Excellency J. J. Gomes de Castro, former Secretary of State, under date of the *21st* of April *1845*, in reply to another forwarded by the Undersigned bearing date the *1st* of September *1844* inclosing a claim made against the Government of Portugal by the owners, officers, and seamen of the American Ship "*Miles*" of New Bedford in the State of Massachusetts, has the honour to remark, that in the said Note of the *21st* of April, some parts of said reclamation was reserved for further consideration to the end that Her Majesty's Government might take further information thereon, and the undersigned was promised the honour of an additional Note giving the result of such information. The Undersigned not having received the promised Note feels constrained, as well by the order of his Government as by the justice of the claim, to address to Baron da Luz, the actual Ministre of State, some observations upon the said Note of the 21st of April and Documents annexed, in the hope that he may be able to present this claim in such a point of view that Her Majesty's Government will no longer hesitate to render justice to these claimants whose property has been taken and applied to repair a National vessel belonging to the Government of Portugal.

The Undersigned in the observation which he is about to submit will confine himself to the more important parts of this claim, and to such a statement of facts as either admitted by the Agents and Officers of the Portuguese Government, or are so clearly proved in the Documents annexed to the claim that they can not be denied or doubted.

The ship "*Miles*" of New Bedford, in consequence of damages received at sea, was obliged to put into the Port of Mozambique, an Island belonging to the Portuguese Government, on the *31st* of July *1841*, where she was condemned as unseaworthy and sold. Her cargo which consisted of sperm oil was taken out and stored under the direction of the proper Officers of the Island who charged and received a large amount of duty upon such exportation, contrary to the universal practise of all civilised Nations towards vessels in distress. . . .

In order to bring the said cargo and crew to the United States, William C. Downs, the Master of the said ship "*Miles*" was compelled to charter of the Governor of Mozambique a vessel belonging to the Government of Portugal called the "*Real Principe D. Pedro*" of which Jeronimo Romero was the Commander. By this contract of affreightment, the Governor of Mozambique promised to put in readiness the ship "*Real Principe D. Pedro*" and to transport the cargo and crew of the ship "*Miles*" to Boston in the State of Massachusetts for the sum of

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Six thousands dollars in Bills of Exchange drawn by William C. Downs upon a mercantil house in Boston and payable to the agent of the Government. . . .

After this contract was entered into William D. Downs discovered that the ship *"Real Principe D. Pedro"* was in an unseaworthy condition making two inches of water per hour while lying in the harbour of Mozambique, and he therefore applied to the Governor of Mozambique to be released from his contract and to charter an American vessel the *"Levant"* which had arrived since his contract was made with the Governor for the *"Real Principe D. Pedro"* and which he could charter upon more favorable terms. This was refused by the Governor, and he was therefore compelled to put his oil on board the ship *"Real Principe D. Pedro"*, unseaworthy as he had found her to be.

The *"Real Principe D. Pedro"* left Mozambique on the *10th* of December *1841*, and it appears from the evidence both of Captain Downs and of Commander Romero, that the ship which was making two inches of water per hour before she left the harbour of Mozambique, was on the *31st* of the same Month, without experiencing any storms or very bad weather at seas, making *15* inches of water per hour, which gradually increased, owing to the rotten state of the vessel, until she was found to be making *46* inches of water per hour. In this dangerous and sinking state, Commander Romero determined to make for some Port of savety; and falling in with a Portuguese vessel bound for Pernambuco, he resolved to make for the same Port in company with this vessel, where he arrived on the *19th* day of February *1842*. . . .

Soon after the arrival of the ship at Pernambuco a survey was held on board, and the surveyors declared that the leak was in her bottom and that she must be hove down, showing evidently that the leak existed before she left Moçambique. The surveyors further declared that the expense of repairing the ship would amount to *15* or *16:000$000* Rs, and that her value was Rs 30:000$000. Thereupon Commander Romero resolved to sell the cargo and apply the proceeds to the repair of the ship. The oil was therefore sold under the direction of the Portuguese Consul at Pernambuco, against the most earnest protestation of Capt Downs and of the American Consul, and the whole of the proceeds applied to the repair of the Ship. . . .

The value of the oil thus taken and applaied to the repair of a National vessel, constitutes a large portion of the claim now preferred against the Government of Portugal; and it seems to the undersigned that this simple statement of facts is sufficient of itself to establish the justice of the claim; and to induce the Government of Portugal at once to make compensation, not only for the oil actually applied to the repair of the vessel, but also for the oil wasted or purloined while under the care and protection of the Portuguese authorities at Pernambuco.

The undersigned was induced to believe, from the justice and liberality which has heretofore animated the Government of Portugal, that, if from any supposed necessity or misconception of the laws of Nations, her Officers and Agents abroad should seize and appropriate to her use and benefit the property of the citizens of another Government she would, as soon as it was made known to her, hasten to repair that injury by a just and liberal compensation: He as therefore been surprised to find, in the said Note of the *21st* of April, opposition made to a claim which seems to him so well founded in justice and sustained by the commercial Codes and usages of the most enlightened and commercial Nations.

It is stated in the Protest of Commander Romero that he sold the cargo and applied the proceeds thereof to the repair of the ship, because he could not raise money in Pernambuco upon the credit of the Portuguese Government. This is an admission that it was the duty of the Portuguese Government to repair its own ship if it could have raised the funds in Pernambuco. Commander Romero says this could not be done, but the Undersigned by no means admits the truth of this assertion. On the contrary he does not believe it. He can not believe that *15:* or *16:000$000* Rs, the sum at which the repair was estimated, could not have been raised in Pernambuco on the credit of the Portuguese Government. The facts show that it is not true, for it is remarkable that while the repair of the ship was estimated at Rs *15* or *16:000$000*, the actual expenditure is put down at Rs *33:862$278*. From this latter sum deduct *15:979$352* Rs, the sum raised by the sale of the oil, and there would remain a balance of

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R$ *17:882$920*, most of which must have been raised in Pernambuco upon the credit of the Portuguese Government. The reason therefore assigned by Commander Romero for having sold the oil to repair the ship is not true in point of fact; though if it had been true, it would only show the obligation of the Portuguese Government to make a just and liberal compensation.

The Undersigned having shown, as he trusts and believes, that this claim is well founded in justice, will now proceed to show that it is equally sustained by the ablest writers on maritime law, and by the Commercial codes and usages of the most enlightened Nations.

His Excellency the Secretary of State, in his said Note of the *21st* of April, has endeavoured to show that this is a case of general average, but the Undersigned has sought in vain to find in it a single circumstance which could bring this claim within the principles of general average. When the captain of a ship at sea, in consequence of stress of weather or otherwise, *voluntarly* cuts away a mast, or throws overboard a part of the cargo, for the safety of the ship and cargo, the ship and the balance of the cargo is made to contribute to the payment of the part thus *voluntarly* sacrificed for their safety and benefit; and each one is made to contribute in proportion to the value of the ship and cargo thus saved. This is what is called general average, and it is just and proper; for but for the voluntary sacrifice of a mast, or the jactation of a part of the cargo, the whole might have been lost and wrecked. The ship and cargo thus saved is bound by the principles of general average to make contribution, but this must be done at the end of the voyage where alone general average ought to be adjusted. . . . But what circumstance is there in this case which could bring it within the principles of general average? No part of the ship was *voluntarily* sacrificed at sea for the safety of the ship and cargo, and wich made it necessary to seek a port of safety.—On the contrary the facts show that the ship was unseaworthy before she left Moçambique; so rotten in her condition that the leak which was making two inches of water per hour before she left Moçambique, made forty six inches per hour before she reached Pernambuco; so rotten in her condition that the expense of her repair at Pernambuco exceeded, by more than one hundred per cent, the estimate made by her surveyors; and so rotten in her condition that the expense of her repair far exceeded the estimated value of the ship. To make this a case of general average, and to apply the whole cargo, at an intermediate port, as in this case, to the repair of the ship, and then abandon the voyage altogether; would be such a perversion of the principles of general average, and such a gross act of injustice and fraud, that neither Portugal nor any other enlightened Commercial Nation would submit to it.

The Undersigned will now refer to the laws and usages of some of the most enlightened and commercial Nations on this subject.

. . . . . .

Having shown from the principles of general average, as well as from the commercial Codes and usages of the most enlightened Nations, that this can not be considered a case of general average, the Undersigned will now submit some observations as to the amount of damages to which the claimants are entitled.

As to the quantity of oil, there can be no doubt. In the protest of Captain Downs, he says there were placed on board the "*Real Principe Dom Pedro*" at Moçambique *248 Casks* well coopered, filled, and placed on board "*in good condition*". Commander Romero, in the Bill of Lading, admits that he received this number on board in the same good condition. Whether these Casks contained *800*, or *850*, or *880* Barrels would of course depend on the sise of the barrel which might be taken as the standard of measurement. What therefore the Minister of State, in his said Note of the *21st* of April, considers a remarcable contradiction, is more apparent than real.

As to the value of the oil there can be as little doubt. In the Custom House at Moçambique where the price of the oil was said to be low, it was valued at *34:092$800;* and in the account of A. Z. Nobre with the ship "*Miles*", the amount of freight, of which the oil constituted the largest portion, is stated at *42:000$000*. . . .

The value of this oil, whether applied to the use and benefit of the Portuguese Government, or allowed to be wasted while under the care and protection of her

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Authorities at Pernambuco, must fall as a charge upon the Government of Portugal. So likewise the losses and damages sustained by the claimants in consequence of the unseaworthy condition of the "*Real Principe Dom Pedro*", and her failure to preform the voyage to Boston according to the contract of affreightment. . . .

From all the fore-going facts and considerations it results that the claimants are entitle to recover:

1st: The money paid into the Custom-House at Moçambique upon the exportation of the oil, which part of the claim is admitted to be just in the said Note of the *21st* of April.

2nd: The value of the oil placed on board the "*Real Principe Dom Pedro*": at Moçambique, and which was either sold and applied to the use and benefit of the Government of Portugal in the repair of one of her National vessels; or allowed to be wasted or purloined while in the care of and under the protection of the Portuguese Authorities at Pernambuco.

3rd: The expenses and damages sustained by the claimants in consequence of the unseaworthy condition of the "*Real Principe Dom Pedro*" and her inability to perform the voyage to Boston according to the terms of the contract of afreitment.

4th: These various sums, with interest thereon till paid, constitutes the amount of the claim now sought to be recovered from the Portuguese Government; and sustained as it is by the principles of common justice, by the uniform opinions of the ablest writers on Maritime law, as well as by the commercial codes and usages of the most enlightened Nations, the Undersigned can not doubt its entire success.

The final attitude of the Government of Portugal in respect of the case of the *Miles*, prior to the settlement agreed to in this convention, appears from the note of Tojal dated April 11, 1850 (D.S., 15 Despatches, Portugal, No. 16, April 16, 1850, enclosure), answering that of Hopkins of July 25, 1849 (cited above and printed in House Document No. 53, pp. 134–37). The translation here of the Portuguese note of April 11, 1850, is from *ibid.*, 138–39 (see also the note of De Figanière e Morão to the Secretary of State dated May 20, 1850, and the answer thereto of May 24, in *ibid.*, 98–99):

The undersigned, Minister and Secretary of State for Foreign Affairs, referring entirely to the note of Visconde de Castro of the 25th April 1845 to Mr. Abraham Rencher, and to that [1] of the 17th October of last year addressed to Mr. G. W. Hopkins, predecessors of Mr. J. B. Clay, in regard to the pretensions of those interested in the cargo of whale oil of the American vessel *Miles*, Captain Downs, to be indemnified for the damages which they allege were caused by the authorities at Mozambique and by the consul of Portugal at Pernambuco, has the honor to address Mr. Clay to signify to him that, desiring as soon as possible to see this claim settled, he has not ceased to urge the Minister of Marine to furnish him with the information yet wanting in order fully to answer Mr. Clay. The undersigned, however, thinks it proper to assure Mr. Clay, as his predecessor had already informed Mr. Rencher, that Her Majesty's Government is ready to refund the amount of duty levied at Mozambique on the reexportation of the oil shipped on board the bark *Real Principe Dom Pedro*, should it have been paid, for the reason that it is an established principle that when a vessel is compelled in distress to seek a harbor, neither the vessel nor its cargo pays any duty whatever when the cargo is reexported and when no commercial transaction has been effected. Her Majesty's Government is likewise resolved to attend to the claims of the captain and mate of the *Miles* when it shall be known, for which orders have been given, what became of the objects they claim, in order to restitute them or pay for their value.

As respects the gross average in relation to the cargo, the undersigned cannot dissemble the sentiments entertained by Her Majesty's Government on perceiving

[1] D.S., 15 Despatches, Portugal, No. 3, October 28, 1849, enclosure.

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that the Government of the United States is not satisfied with the incontrovertible reasons which have been submitted to show that the bark *Real Principe Dom Pedro* cannot in any way be considered in this case as a national vessel, but merely as any other merchant vessel, from the moment it was chartered, according to the usual mercantile practice, to take a cargo to the port of Boston, since from this very fact it was undoubtedly subject to the general maritime laws in vigor.

The legal account of gross average on the cargo, vessel, and freight drawn up at Pernambuco, a copy of which was transmitted to Mr. Rencher in the note of the 25th April, above mentioned, absolves Her Majesty's Government from the payment of any balance to those interested in the cargo of oil in question, nearly one half of which had leaked out of the casks *during the voyage* (as is frequently the case with such an article) and not at Pernambuco, as Captain Downs pretends, and what was there unladen and sold did not cover the expenses of putting into that port in distress. Nevertheless, Her Majesty's Government, desirous to give a further proof of its good faith and ardent wishes to contribute, by all the means in its power, to the maintenance of the most perfect harmony and good understanding with the Government of the United States, which the amicable relations and mutual interests happily existing between the two countries require, the undersigned will remark that the nature of this case being *purely mercantile*, it might be referred to the decision of arbiters without impairing the dignity of the two Governments, *each of the parties* appointing three or more merchants of Lisbon, with power to consult any other persons specially well versed in commercial and maritime laws.

It therefore appears to the undersigned that the mode proposed would be the most regular and practicable by which to decide with impartiality this *particular* claim; and he flatters himself that Mr. Clay will do justice to the sentiments by which Her Majesty's Government is influenced towards that of the United States and will give credit to its deep solicitude to bring to a settlement, as soon as possible and *conformably to justice*, not only this claim but *all* the others still pending. The undersigned in the meanwhile will have all the documents collected upon which to meet the foundation of a decision by the said arbiters, in order that when the consent of the Government of the United States arrives, it may be carried into effect without delay.

The offer to refer the case of the *Miles* to the arbitration of the merchants of Lisbon was rejected by Clay on April 24, 1850 (see House Document No. 53, pp. 60–61).

The amount of the claim in the case of the *Miles*, as fixed by the convention, was that proposed by Clay, namely, $42,098. The details of his calculation do not appear; the chief item of the claim was the value of the oil; and interest for some seven or eight years was doubtless included in the total.

THE "MAGOUN"

Early in 1849, two members of the crew of the brig *Magoun* arrived at Lisbon and made protest (January 24) before the American vice consul, a copy whereof was enclosed with the despatch of Hopkins of March 11, 1849 (D.S., 15 Despatches, Portugal, No. 15). Hopkins had made inquiry of the Portuguese Foreign Office and had been informed that the brig had been seized and condemned on the ground that she was engaged in the slave trade (*ibid.*). At almost the same time, the owner of the *Magoun*, George M. Usher, of New York, sent papers in the case to the Secretary of State (March 31, 1849); those papers were transmitted to the Chargé d'Affaires at Lisbon with the instruction of April 20, 1849 (quoted above). Further papers were transmitted to Lisbon with instructions of September

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27 and October 12, 1849 (D.S., 14 Instructions, Portugal, 131–34). In his despatch of November 17, 1849, James Brown Clay, the successor of Hopkins as Chargé d'Affaires at Lisbon, wrote as follows (D.S., 15 Despatches, Portugal, No. 5):

I have not as yet received sufficient testimony as to the value of the Magoun, nor any thing whatever to guide me upon the claim which you instruct me to make on behalf of her crew, neither their number or names, nor what amount I shall claim for them. Mr Dupuy ought also to furnish other testimony besides his own statement, as to the facts to entitle him to indemnification. I presume however that I shall receive all this in good time.

A note of Clay, of the same date as the foregoing despatch, formally presented the claims arising out of the case of the *Magoun* and narrated the facts, as they appeared to him from the papers received; Clay wrote as follows, in terms of harshness which were not justified, even by the face of the papers before him (*ibid.*, enclosure):

The undersigned is instructed by his Government to bring to the attention of the Government of Her Majesty, and formally to present for indemnification, a series of claims growing out of the wanton and illegal seizure and confiscation of the American Brig Magoun by the Portuguese authorities. These claims are 1st That of the owner of the Brig. 2d That of the crew who survived the barbarities of the Prison into which they were thrown at Mozambique, and of the relatives of the men who perished in consequence of those barbarities. And 3d That of Mr Carlos Dupuy, a passanger on board of the ill fated Magoun, who was seized whilst under the protection of the American flag,[1] and with the crew of the Brig, thrown into prison where after remaining in confinement for a period of eleven months, he was finally forced to purchase his freedom from the authorities of Mozambique.

The history of the whole case or series of cases is briefly this. The American Brig Magoun Horatio N Russell master, was chartered at Rio de Janeiro on the 1st day of July 1847 by a merchant named Antonio Fernandez Lima, for a voyage to the East & West coasts of Africa with a lawful cargo, to whatever ports the agent of the charterer should designate, he being a passenger on board. She was also to take what passengers she could accommodate. She left Rio de Janeiro on the 19th July and by the direction of the agent of the charterer put into the river Angosha.[2] She arrived at the anchorage in that river on the 12th Sept. when she discharged her cargo & took on board some sand as ballast. On the 14th Novr she hove up anchor to proceed on her voyage, but made only a mile or two from her anchorage, when on account of head winds, she came to. On the 21st Novr a Brig and Schooner under the Portugese flag and twelve boats of British men of war, entered the river, as was understood, for the purpose of bombarding the Town of Angosha, which was in the possession of the Moors. The Captain of the Portuguese Brig of war, the Juan de Castro, went on board the Magoun, produced the Treaty made with the United States, and said the Captain had broken it, by entering the Angosha river; The Captain of the Magoun informed him "that he was not aware of its being a Portugese place, as they had never had possession, nor had their flag flown, or had the government ever had any resident there, it being under a Moorish Sultan who did not acknowledge the Portugese". The Portugese Captain then said he should put a prize crew on board the Magoun and send her up to Mozambique. Afterwards the Captain of the Magoun was employed by the Major commanding the Portugese forces, in carrying some letters to the Sultan of Angosha, which he did under the

[1] Dupuy was of Habana and was not an American citizen.

[2] Angoche, variously spelled then and now; the name of a region, an island, a river, and a port thereon, in Portuguese East Africa; the mouth of the river is about one hundred miles south of Mozambique.

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flag of his country, and upon his refusing to convey others, the Moors having threatened his life if he did so, his Brig was taken possession of by the Portugese authorities, and he sent prisoner on board the Portugese Brig, notwithstanding his protest against such violence beneath his flag. After remaining a prisoner for 48 hours, on board the man of war, he was sent on board his own vessel, which was then taken by a prize crew to Mozambique, where she arrived on the 7th Decr On the 21st Decr all the ships papers were taken possession of by the authorities at Mozambique. On the 23d December they finished discharging the vessel of what she had on board.

On arriving at Mozambique all the passengers of the Magoun were sent prisoners on board a Portugese man of war, & the Captain & crew were kept in close confinement on board the Magoun; they continued to be so confined until about the last of April 1848, when all passengers & crew, were transferred to a public prison in Mozambique, where they were kept for a period of many months, where they endured most horrid sufferings, and where many of them died, amongst others the Captain and Mate, owing to the barbarities of the Portugese authorities. After the death of the Captain and mate, the vessel was condemned as forfeited to the Portugese government; against which condemnation and forfeiture, no person whatever, had opportunity to interpose any defense, it having been made wholly upon ex parte statements; it was even asserted at Mozambique that the Captain and Mate were starved to death, to prevent their testimony being given upon the case. Each portion of the affair, from the seizure of the vessel to the death of the Captain, was accompanied with great violence, and outrageous abuse of the American people and flag, by the Portugese authorities concerned in it. Indeed the whole character of the case, as it appears from the testimony, is such as to be beyond belief, were it not that cases of almost equal wantonness and barbarity have heretofore occurred.

The undersigned has given but an imperfect statement of the outrages which are the basis of the claims for indemnification which he has been instructed to make. He will in a short time transmit to your Excellency full proofs of the whole affair, and it is confidently expected that the government of Her Majesty will not long hesitate to do justice to the injured parties.

Further testimony in the case, which Clay thought to be "in some respects not so complete as I could have desired", was transmitted to the Minister and Secretary of State for Foreign Affairs on February 23, 1850; this consisted of a statement of the deceased master of the brig and depositions of six parties in interest (*ibid.*, No. 11, February 28, 1850, enclosure).

The case made for the claimants was answered by Tojal on March 18, 1850; the substance of that note (translation) follows; it will be seen that the Portuguese Government rejected any claim for the brig on the ground that it had been engaged in smuggling and in the slave trade; the claim of the passenger, Dupuy, and those based on ill treatment of the personnel of the vessel were to receive further consideration (*ibid.*, No. 14, March 28, 1850, enclosure C, translation):

The undersigned Minister and Secretary of State for Foreign Affairs has had the honor to receive the notes which Mr. James Brown Clay, Chargé of the United States of America, addressed to him on the 17th of November of the past year and the 23d of February last, with the depositions both of the owner and captain of the American brig *Magoun* and of the other persons named in the second of his notes mentioned above.

Without loss of time, the undersigned transmitted to the Minister of Marine the translation of the first of the said notes; and His Excellency, with reference to the decision of the Court (*Junta*) of Justice rendered at Mozambique on May 23, 1848, of which Mr. George Washington Hopkins was informed on February 26 of the past year and which is now being sent, in copy, to Mr. Clay, repeats that there can be no doubt that that vessel was employed in smuggling and in the illicit slave trade.

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From the contents of the said decision, it clearly appears that the brig *Magoun* smuggled her load ashore at a forbidden port on the coast of Mozambique such as Angoche, situated at the middle of the line running from the islands of Cape Delgado to the Bay of Lourenço Marques, limits of Portuguese territory. And as regards Sultan Amad Bar Bana Mucon, a subject of Her Majesty, who was governing there *and was receiving pay from Portugal*, if he did rebel, the punishment for his rebellion having already begun, that circumstance in no wise affects the right and dominion of the Portuguese Crown over the said territory.

By the treaty[1] of August 26, 1840, between Portugal and the United States, American vessels are permitted to enter only those ports of Her Majesty's dominions where there is a customhouse and foreign commerce is not prohibited, it therefore being evident that this violation of established laws would be sufficient in itself alone to justify the seizure and condemnation of the brig *Magoun*.

Furthermore, the fact of her not clearing from Rio de Janeiro for any certain and definite port of the east or west coast of Portuguese Africa indicated more than sufficiently how fraudulent the intent of the *Magoun* was.

In addition to what is stated above, the said brig also incurred the penalties provided in the decree of December 10, 1836, which prohibited the slave trade in all the Portuguese dominions, without exception, because there were found on board more than three hundred mats, an extra deck (*bailéu*), and all the other things which vessels exclusively devoted to that trade are accustomed to use; an extra deck which was in fact built on board by carpenters who came from shore at Angoche, having been called by the passenger Chaves, whose orders the American Captain Russell was carrying out on the trip from Rio de Janeiro, as he himself declared under oath.

It was shown also by the deposition of the pilot and of the sailors of the *Magoun* that the said captain had a letter of orders from the owner to receive from the said Chaves 10,000 Spanish dollars (*pesos duros*) and deliver the *Magoun* to him, as well as to disembark all the American crew at Angoche as soon as such delivery should be effected and there await another vessel which would take them to Rio de Janeiro, from which it is clearly deduced that the said brig had been bought by that Portuguese subject for the purpose of receiving slaves and transporting them to Brazil. Furthermore, the Portuguese sailors who came from Rio de Janeiro on board the brig *Magoun* also deposed that they had been contracted for to go on board *as passengers*, receiving a wage of 20 milreis and a bonus of 500 milreis when they should return from the coast of Africa *with the cargo of slaves;* all the testimony being uniform in declaring that the said Chaves bought slaves in exchange for goods which he carried and that he had on board all equipment for their transportation, including an apparatus for distilling salt water, the caldrons of which apparatus were used also for meals of the slaves.

In view, therefore, of the decision made in the case by the competent tribunal with all the formalities prescribed and with the necessary evidence and clearness, there is no doubt that the claim on the part of the owner and captain of the American brig *Magoun* is inadmissible; nor can the undersigned presume for a single moment that the Government of the United States, whose revenue laws are so strict that they punish with all rigor and severity the smallest violations, even without evidence of fraudulent intent, is surprised at the procedure of the authorities of Mozambique in the case in question and does not acknowledge that Her Majesty's Government, because of the complete independence of the judicial power, cannot revoke the decision which condemned that brig for having thus violated the laws of the country and the revenue regulations in force.

In so far, however, as the treatment accorded the crew of the brig *Magoun* is concerned, the proper orders have already been issued by the Ministry of Marine to the Governor General of the Province of Mozambique to report whatever occurs to him in this connection; and the undersigned declares that if the bad treatment complained of by Mr. Clay is proved, the guilty persons will be severely punished, it being my duty to advise that in such cases the law imposes simple imprisonment.

Lastly, as regards the indemnity claimed by Mr. Charles Dupuy, a passenger on the said brig, who was detained at Mozambique and who, as he affirms, *bought* his liberty from the authorities of that Province, a criminal investigation into the

[1] Document 95; see Article 8 thereof.

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facts alleged has already been ordered, so that due punishment may be meted out to the offenders, if such there are, and such action be taken with respect to the indemnity sought as justice may require.

The undersigned avails himself of this opportunity to renew to Mr. James Brown Clay the assurances of his most distinguished consideration.

A translation of the sentence of the tribunal at Mozambique, dated May 23, 1848, adjudging the *Magoun* good prize, was also with the despatch last cited (enclosure D); that translation (printed in House Document No. 53, pp. 143–45) was characterized by De Figanière e Morão as "incorrect and unintelligible" (note of September 23, 1852, quoted above); it may be compared with the following new translation of the Portuguese text, a copy of which was enclosed with the cited despatch No. 14; the signatures are here omitted:

Decision in Court of Justice, etc. The papers of the American brig *Magoun*, sailing from Rio de Janeiro, having been viewed and examined, as well as the proceedings in the action brought by the Customs Service against that same ship, it is shown that on November fifth of last year, eighteen hundred and forty-seven, a launch was dispatched to the River Angoche by the officer in command of the frigate *Eurydice* of the English cruising station off this coast, which saw a brig at anchor in the said river and at first could not make out to what nation she belonged, but learned immediately afterward that she was an American vessel, from the flag that was hoisted; the commanding officer having been informed of this upon return [of the launch], it was sent to the same spot for the second time, on the seventh of the said month, and then the officer who was in the launch observed that the American captain was greatly frightened; he kept repeating that he was an American and that he asked to have the ship's papers examined; to this circumstance there was added another one, [namely] that two English sailors who were on that brig asked for a place on the frigate and then told the crew of the launch that the said brig had an extra deck (*bailéo*) set up, which was dismantled on the fifth, upon the unexpected appearance of the launch in the river, which caused the said English officer to suspect that the brig was not engaged in lawful trade. It is shown that that suspicion was not unfounded, because His Excellency the Most Excellent Governor General of this Province, then head of the National Station, having, in consequence of the report of the commanding officer of the frigate, sent the naval brig *D. João de Castro*, reenforced by part of the crew of the naval brig *Tejo*, its commanding officer learned from the American captain and from his crew that a large quantity of goods, arms, and powder had been smuggled ashore and that they also had on board more than three hundred mats, which were actually seen and confiscated at the time of inspection. It is shown that the American vessel *Magoun* having been seized and brought to this port, the customs officers found, on making an inspection, the extra deck itself, one of those that ships intended for the slave trade are accustomed to use, as well as two fireplaces and other articles enumerated in the respective proceedings. It is shown by the testimony of the said first and second mates of the said American ship, and also by that of the seamen, that an extra deck had indeed been set up on board the said brig by carpenters who came from the country of Angoche, sent by the passenger Chaves, by whose order the American captain had come from Rio de Janeiro, as he himself declared under oath when he was interrogated by the Customs Service. It is shown, further, by the very declarations of the Americans, that the captain had a written order from the owner to receive ten thousand pesos from Chaves and to turn over that ship, which order was read by the captain to the first mate, in which instructions were also given that when the actual transfer became effective, he should have all the Americans disembarked at Angoche and should wait for another ship that was to come to take them to Rio de Janeiro, which well and clearly proves that, as the ship was to take on slaves, it was not desired that the Americans should be involved in it. It is shown by the testimony of the Portuguese sailors that they were hired and given money in the office of Manoel Pinto da Fonseca, by his cashier and in his presence, to come

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on the ship as passengers, being entitled to twenty thousand reis a month as pay and a bonus of five hundred thousand reis on the return when that American ship on which they were to go as sailors should reach Brazil with a cargo of slaves from the coast of Africa. It is shown, moreover, by the contents of the ship's passport, that she sailed from Rio de Janeiro with fraudulent intent, inasmuch as no mention is made in it of the certain port or ports for which she was bound, as is done by ships that are engaged in lawful trade.

It is shown, lastly, by the uniform testimony of all the witnesses, that Chaves bought slaves with merchandise that he carried and that he had everything ready for transporting and exporting the slaves that he purchased, including the apparatus for distilling salt water into fresh water, the two large caldrons of which were used for preparing food for the slaves, which was procured for the purpose and had already been tried out on board a pangaio [1] and the spot marked on the brig for installing it; in view of which, as there cannot be the least doubt that the ship was employed in the slave traffic, and having ample proof of this crime towards which she was working actually and effectively, therefore, and in view of the proceedings, all the members [of the court] decide unanimously that the ship has incurred the penalties of the decree of December 10, 1836, because the crime is fully proved, and it is judged to be a good prize taken on the coast of East Africa for all legal purposes.

Some of the papers already cited and some of the later diplomatic correspondence at Washington and at Lisbon in the case of the *Magoun* (April 27 to June 19, 1850) are printed in House Document No. 53, pp. 92–98, 140–52. In the course of the exchanges at Lisbon (*ibid.*, 148), Clay put forward the extraordinary arguments (*a*) that Portuguese "law cannot justify the proceedings against the Magoun even had she been taken in the act of carrying on the slave-trade in the Portuguese dominions" and (*b*) that, assuming the existence of the contract referred to in the judgment of the Mozambique tribunal, "it is clear from the very contract as asserted, that her American owner did not intend to engage her himself in that trade". Similar contentions are set forth in Clay's despatch of March 28, 1850 (D.S., 15 Despatches, Portugal, No. 14), wherein he said that under general public law "the case is too clear to admit of argument".

There were, however, three Portuguese notes written on the case of the *Magoun* which are among those listed in the note of protest of De Figanière e Morão of September 23, 1852 (printed above), and there characterized as "essential omissions" from House Document No. 53. The first of these was the note of Tojal of March 23, 1850, transmitting, in response to Clay's request, printed copies of three Portuguese decrees therein mentioned (a copy of the note and the three printed decrees were enclosures to the cited despatch No. 14). In the note of March 23, 1850, Tojal, after referring to the request of Clay, wrote as follows (*ibid.*, translation, slightly revised):

By transmitting the enclosed printed copies of the decree of June 5, 1844, and that of December 10, 1836, I trust I have satisfied the wishes expressed in the above-mentioned notes. From table No. 1, to which the decree of June 5, 1844, refers, you will perceive which are the ports in the Portuguese possessions where alone foreigners are allowed to trade. There you will find designated the port of Mozambique as the only one on that extensive coast which is not closed against the vessels of the various nations to whom the liberty of trading in the possessions alluded to has been granted, and inasmuch as the first article of that decree pro-

[1] A small vessel.

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vides that the commerce of the other ports not mentioned in the same table shall be considered as forming the coasting trade and as such to be engaged in by Portuguese vessels, it is evident that the port of Angoche, situated on the above-mentioned coast, is within the limits of the Portuguese dominions and prohibited to foreign vessels. In table No. 2 are enumerated the articles which are equally prohibited to be imported into Portuguese territories; and in the table attached to the decree of June 23, 1847, which was substituted for table No. 3 and of which I also send you a copy, are designated the articles which alone can be imported into said territories, being Portuguese productions and imported by Portuguese vessels.

In view, therefore, of the provisions contained in these decrees, which are found inserted in the decree of December 10, 1836, abolishing the slave trade in all the Portuguese dominions without any exception whatever, and of the stipulations contained in the treaty [1] of August 26, 1840, between Portugal and the United States, you will see that in the seizure and condemnation of the American brig *Magoun* the authorities of Mozambique have acted legally in the strictest sense, as I have already demonstrated in my note of the 18th instant.

The second of the "omissions" from House Document No. 53 was a note of Tojal of April 6, 1850, which transmitted two papers, namely: a copy of an opinion of the Attorney General of the Crown (April 2) concerning the operative laws regarding the entrance of foreign vessels into the ports of Portuguese possessions prior to the decree of June 5, 1844; and a copy of the convention [2] of July 28, 1817, between Great Britain and Portugal (additional to the treaty of January 22, 1815), in Article 2 whereof the territories possessed by the Crown of Portugal on the east coast of Africa are declared to extend from Cape Delgado to the Bay of Lourenço Marques (for the note of April 6, 1850, and its accompaniments, see the enclosures to Clay's No. 15, of April 9, 1850, in D.S., 15 Despatches, Portugal).

There is no doubt whatever that by Portuguese law of the time vessels under other flags were excluded from all trade with Angoche.

As the third of the "omissions" from House Document No. 53, De Figanière e Morão listed his own note of July 18, 1850 (D.S., 4 Notes from the Portuguese Legation), wherewith he enclosed a translation of the note of Tojal to Clay of the previous June 18 (House Document No. 53, pp. 148–51) and wherein he argued that the *Magoun* was engaged in the slave trade, according to the ordinary sense of the words, and had violated the commercial and revenue laws of Mozambique.

One cannot now read the papers filed by the claimants in this case without being assured that the *Magoun* sailed from Rio de Janeiro for a venture in slaves. The unspecified destination; the presence of Usher on the vessel as "agent"; the nondisclosure to the master of any destination until the vessel was at sea, when Usher said to shape the course for Mozambique Channel; the failure to give any more specific direction to the master until the Cape of Good Hope had been rounded; the stay of weeks at Angoche because of "contrary winds"; the customhouse at that port, where all forms were observed; the present to the "Sultan" there because there was no customhouse; the charter for outward and return voyages at $1,210 per month; the

[1] Document 95; see Article 8 thereof.

[2] The English version is in British and Foreign State Papers, XI, 689–94.

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return voyage started in ballast only; the twenty-one "passengers" taken from Rio de Janeiro for loading and unloading cargo; the trip of Dupuy, at a cost of $500 for himself and servant, to visit various ports on the African east coast to learn about their trade; the "commercial house" of the charterer, Antonio Fernandez Lima, at Angoche, where twelve of the "passengers" remained to "attend and assist"—these and the rest make up a convincing medley of guilty silence, blundering admission, and fantastic falsehood.

The claim on behalf of the personnel of the *Magoun* for ill treatment may have been just; one may well suspect, though not deem fully established, the connection of Dupuy with the enterprise; but the claim for the vessel was a claim for a slaver.

The amount of the claims in the case of the *Magoun*, as fixed by the convention, were those proposed by Clay, namely, for Dupuy (who had suggested $40,000), $2,606; for the officers and crew, $2,688; and for the vessel, $12,000. Just how the various sums were arrived at does not appear; the *Magoun* was a brig of 168$^{4}/_{95}$ tons, built in 1825; Usher alleged that he had bought the vessel for $4,000, had spent $6,000 on repairs, and had refused an offer of $10,000; his valuation was $15,000, and he also claimed for part of the alleged charter money.

THE "COL. BLUM"

The case of the schooner *Col. Blum* was presented to the Department of State by a memorial of the owners and underwriters dated January 15, 1849, and accompanied by supporting papers. The claim as stated was for the values of freight lost, $3,144.33, cargo lost, $1,286.68, and vessel lost, $5,149.50, amounting to $9,580.51, plus interest.

The papers were sent to Hopkins at Lisbon with the instruction of January 31, 1849 (D.S., 14 Instructions, Portugal, 109–10); and the case was presented to the Government of Portugal by note of March 10, 1849, in these terms (D.S., 15 Despatches, Portugal, No. 16, March 18, 1849, enclosure):

> In obedience to instructions which I have received from the Government of the United States, I have the honor to lay before your Excellency, the claim of the owners, Underwriters and Master of the American Schooner "Col Blum" against the Portuguese Government, for losses occasioned by the alleged illegal seizure, and subsequent destruction of that Schooner at the Island of Sal,[1] by the local authorities of Her Most Faithful Majesty's Government.
>
> From information which I have received, it appears, that this Schooner sailed from New York on the 4th of July 1848, bound for Rio de Janeiro, with a cargo of coals, lumber, hay &c. She encountered head winds and calms, and consequently had a long voyage, which in addition to the loss of water from the accidental bursting of the hoops of several water casks, the Schooner was forced to put in to the Island of Sal in distress, being left with a small quantity of water, and that unfit for use. The Schooner stopped in Mordeira Bay [September 6]. On the same evening, the Mate of the vessel made an ineffectual effort to communicate with the Island by means of a small boat, and on the next morning he was sent on shore to procure relief. This was refused, and he was peremptorily told that the Schooner must come into the Port of St Mary to obtain water. He protested in vain, both the sufferings of the crew, and the adverse winds and current, which for hours had baffled all the efforts of the Master and crew to bring her into the Port

[1] One of the Cape Verde Islands.

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of St Mary. On the next day, the harbor Master boarded the Schooner with armed men, and informed the Master that the vessel should have no water, untill she was brought into the Port of St Mary, and that unless this was done, a fine of 576$000 reis would be imposed upon her, notwithstanding the wind was still against her. The Captain then went on shore with the harbor Master, under the hope of being able to communicate with the American Vice Consul, but was disappointed. He exhibited his Ships papers, and earnestly implored relief upon grounds of both justice and of humanity, but in vain, for instead of the relief to which he was justly entitled, his Ships papers were rudely seized by armed Soldiers. Under these circumstances, the Captain went before the Brazilian Vice Consul, in the absence of any American Consular agent, and made his protest in due form of law, which was duly authenticated, and is now in my possession.

Subsequently [September 8], the Master of the Port, who had already as stated, taken forcible possession of the Schooner, attempted to force her into the Port of St Mary, against all the admonition and remonstrances of the Master of the Schooner, and the consequence was the entire loss of the Schooner, her cargo, and of every thing belonging to the vessel. Having thus ignorantly brought on this calamity, or flagitiously committed this high handed outrage, the harbor Master seized upon the only small boat at hand belonging to the Schooner, to affect the escape of himself and his own men, and left the American Sailors on the sinking wreck, all of whom must in all probability have perished, but for the timely aid, generously sent to them by a German Master who was an eye witness of the scene, and whose testimony has been obtained.

I forbear any further comments at present, upon this extraordinary case. The proximity of the Island where this outrage is alleged to have been committed, and the facilities of frequent communication with it, will preclude the necessity for much delay in ascertaining the truth of the facts stated by the parties aggrieved. I feel warranted therefore in saying under the peculiar circumstances of this case, that the Government of the United States will expect the claim to be brought to an early determination.

In addition to the several specific items which compose the greater part of this claim, and which amount to the sum of ($9580:51.) nine thousand, five hundred and eighty dollars, and fifty one cents, with interest from the day of the seizure of the schooner, the Government of the United States will insist upon ample reparation for all the consequences resulting from acts so flagrantly unjust and inhuman, as those represented to have been committed by the Portuguese authorities, upon the "Col Blum"

Copies of the numerous supporting papers were transmitted to the Portuguese Minister and Secretary of State for Foreign Affairs by note of Clay of November 17, 1849 (*ibid.*, No. 5, November 17, 1849, enclosure).

The answer of Tojal, rejecting the claim, was under date of May 28, 1850 (*ibid.*, No. 21, May 28, 1850, enclosure; a translation thereof and of the enclosed report of the Governor General are printed in House Document No. 53, pp. 154–59); it was said that it was unlawful, even for Portuguese vessels, to anchor in Mordeira (or Murdeira) Bay; that the schooner should have gone to the port of Santa Maria; and that the loss was to be attributed to "defects" of the vessel; but the testimony regarding contrary winds was not controverted; on this last point the note is very weak, as it suggests some "clandestine speculation" as the reason for anchoring in Mordeira Bay instead of sailing the "little distance" of nine miles to Santa Maria; but when the captain of the port attempted to take the schooner that "little distance", she was lost. Commander William M. Armstrong, U.S.N., senior naval officer of the African squadron in 1848, who then had the case investigated, wrote to the Secretary of State (November 2, 1849) that

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the schooner was taken possession of "and lost in the most wanton manner by the Portuguese authorities" of Sal.

In the Portuguese note last cited, it was suggested that in any case the claim was excessive by some $3,000 or more (see also on this point the note of the Minister Resident of Portugal dated June 25, 1850, in *ibid.*, 100–1). The amount of the claim, as fixed by the convention, including interest, was that proposed by Clay, $8,911; he had written this on the question in his cited despatch of January 29, 1850 (No. 9):

> Several of the claims contain items which I do not think we can justly insist upon; . . . in the case of the Col Blum, a claim is made, not only for 15 per cent upon the value of the cargo, which was expected to be realized at Rio Janeiro, the owner being the freighter, but also for freight to that port, and a return freight to the United States.

THE TRIVIAL CLAIMS

The claim in the case of the *Ganges*, presented July 12, 1848, was for return of tonnage duty levied in the sum of $32; remission of a fine of $21 imposed on the brig *Long Island* was sought; a boat of the whaleship *Bolton*, valued at $200, had been seized, and recompense had been asked on June 30, 1849; the last two of those three claims were not disputed.

ARTICLES 4, 5, AND 6

The ten instalment payments of $9,172.70 each, with interest, were duly made at Lisbon in their equivalent in "Portuguese current money"; in Portugal the legal value of the dollar was 920 reis; the following statement of amounts, etc., was enclosed with a despatch of December 8, 1854 (D.S., 16 Despatches, Portugal, No. 8, enclosure 4):

> Statement of the Bills passed by the Treasury Department of Portugal to the Foreign Office for the payment of the successive instalments of the indemnity (84:388$840, or in dollars $91,272.00) payable to the United States in pursuance of the Convention ratified 23d June 1851; each instalment being one-tenth of the whole original principal, together with interest at 6 per cent. added on the balance of said principal yet unpaid; the interest entering into the 1st Instalment being calculated on the whole principal for 100 days, & that on each subsequent instalment for six months. The Dollar being equal by law to 920 Reis.

Payable.	Principal Due.	Interest thereon.	Total.
1. Sept 30. 1851	84, 388$840	1, 387$213	9, 826$097
2. March 31. 1852	75, 949$956	2, 278$499	10, 717$383
3. Sept. 30. "	67, 511$072	2, 025$332	10, 464$216
4. March 31. 1853	59, 072$188	1, 772$165	10, 211$049
5. Sept. 30. "	50, 633$304	1, 518$999	9, 957$883
6. March 31. 1854	42, 194$420	1, 265$832	9, 704$716
7. Sept. 30. "	33, 755$536	1, 012$666	9, 451$550
8. March 31. 1855	25, 316$652	759$499	9, 198$383
9. Sept. 30. "	16, 877$768	506$333	8, 945$217
10 March 31. 1856	8, 438$884	253$166	8, 692$050

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Recapitulation

Capital: 84,388$840; or, in Dollars, $91,272.00.
Interest: 12,779$704; " " " 13,890.00.

The first six payments were received by Charles B. Haddock, Chargé d'Affaires at Lisbon; for the receipt of the two of earliest dates, he had powers under the Great Seal (D.S., 3 Credences, 410, 420, September 1, 1851, and February 16, 1852); such authorizations seem to have been thereafter deemed unnecessary, for there is no later record of any; the last four payments were received by Haddock's successor, John L. O'Sullivan, who was commissioned Chargé d'Affaires on February 16, 1854, and Minister Resident on the following June 29. The tenth and final instalment was due on March 31, 1856, and not, as the drafters of the convention assumed, on September 30 of that year (see the closing phrase of Article 5).

With the money paid at Lisbon, drafts on London were purchased and sent to Baring Brothers & Company, the bankers of the United States, for credit (see D.S., 16 and 17 Despatches, Portugal, *passim*).

The credits at London were transferred to the United States, and the distribution of the fund was made in dollars by the Department of State and not by the Treasury; the relevant correspondence is lacking; the receipts and payments for about 70 percent of the total indemnity are shown in D.S., Accounts Current, 1846–61, 219, 234–35, 242, 248.

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Treaty Series No. 62
10 Statutes at Large, 916-25
18 *ibid.*, pt. 2, Public Treaties, 159-63

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COSTA RICA : JULY 10, 1851

Treaty of Friendship, Commerce, and Navigation, signed at Washington July 10, 1851. Original in English and Spanish.
Submitted to the Senate December 12, 1851. Resolution of advice and consent March 11, 1852. Ratified by the United States May 25, 1852. Ratified by Costa Rica March 22, 1852. Ratifications exchanged at Washington May 26, 1852. Proclaimed May 26, 1852.

Treaty of Friendship, Commerce and Navigation between The United States of America and The Republic of Costarica

In the Name of the Most Holy Trinity

Commercial intercourse having been for some time established between the United States and the Republic of Costarica, it seems good for the security as well as the encouragement of such commercial intercourse, and for the maintenance of good understanding between the United States and the said republic, that the relations now subsisting between them, should be regularly acknowledged and confirmed by the signature of a Treaty of Amity, Commerce and Navigation;

For this purpose they have named their respective Plenipotentiaries, that is to say:—

The President of the United States, Daniel Webster Secretary of State;

Tratado de Amistad, Commercio y Navigacion entre la República de Costarica y los Estados Unidos de America

En el Nombre de la Santissima Trinidad

Habiendo tráfico comercial establecido hace algun tiempo entre la República de Costarica y los Estados Unidos ha parecido conveniente para la seguridad como tambien para el fomento de sus mutuos intereses, y para la conservacion de la buena inteligencia entre la mencionada Republica y los Estados Unidos, que las relaciones que ahora existen entre ambas partes, sean reconocidas y confirmadas formalmente por medio de un Tratado de Amistad, Comercio y Navigacion;

Con este objecto han sido nombrados los respectivos Plenipotenciarios, a saber:—

Por su Excelencia el Presidente de la Republica de Costarica, el Señor Don Felipe Molina, Envia-

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And his Excellency the President of the Republick of Costarica, Señor Don Felipe Molina Envoy Extraordinary and Minister Plenipotentiary of that Republic to the United States;

Who after having communicated to each other their full powers, found to be in due and proper form, have agreed upon and concluded the following Articles:

ARTICLE I

There shall be perpetual amity between the United States and their citizens on the one part, and the Government of the Republic of Costarica and its citizens on the other.

ARTICLE II

There shall be between all the territories of the United States and the territories of the Republic of Costarica, a reciprocal freedom of commerce. The subjects and citizens of the two countries, respectively, Shall have liberty freely and securely to come with their ships and cargoes to all places ports and rivers in the territories aforesaid, to which other foreigners are or may be permitted to come; to enter into the same, and to remain and reside in any part thereof, respectively; also to hire and occupy houses and ware houses for the purposes of their commerce; and generally the merchants and traders of each

do Extraordinario y Ministro Plenipotenciario de dicha Republica cerca del Gobierno de los Estados Unidos

Y por el Presidente de los Estados Unidos, Daniel Webster, Secretario de Estado.

Quienes despues de haberse comunicado mutuamente sus plenos poderes, y halladolos en debida y regular forma han accordado y concluido los Articulos siguientes.

ARTICULO I

Habrá una perpetua amistad entre el Gobierno de la República de Costarica y sus ciudidanos por una parte y los Estados Unidos y sus ciudadanos por otra parte.

ARTICULO II

Habrá entre los territorios de la Republica de Costarica, y todos los territorios de los Estados Unidos una reciproca libertad de comercio. Los ciudadanos y súbditos de los dos paises, respectivamente, tendrán libertad para ir, libre y siguramente, con sus buques y cargamentos, á todos parages, puertos, y rios en los territorios antedichos, á los cuales se permite ó se permitiere ir á otros estrangeros, entrar en los mismos, y parmanecer y residir en cualquiera parte de ellos, respectiveamente; tambien para alquilar y ocupar casas y almacenes para los objectos de su comercio; y generalmente los comerciantes y trafi-

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nation respectively, shall enjoy the most complete protection and security for their commerce, subject always to the laws and statutes of the two countries, respectively.

In like manner the respective ships of war and post office packets of the two countries shall have liberty freely and securely to come to all harbors, rivers and places to which other foreign ships of war and packets are or may be permitted to come; to enter into the same, to anchor and to remain there and refit, subject always to the laws and statutes of the two countries respectively.

By the right of entering the places ports and rivers mentioned in this Article, the privilege of carrying on the coasting trade is not understood, in which trade national vessels only of the country where the trade is carried on are permitted to engage.

ARTICLE III

It being the intention of the two High Contracting Parties to bind themselves by the preceding Articles to treat each other on the footing of the most favored nation, it is hereby agreed between them, that any favor, privilege or immunity whatever, in matters of commerce and navigation, which either Contracting Party has actually granted, or may hereafter grant, to the subcantes de cada nacion, respectivamente, gozarán la mas completa proteccion y siguridad para su comercio; estando siempre sujetos á las leyes y estatutos de los dos paises, respectivamente.

Del mismo modo los respectivos buques de guerra y paquetes de correo de los dos paises tendrán libertad para llegar franca y siguramente a todos los puertos, rios, y lugares, á que se permite ó se permitiere llegar buques de guerra y paquetes de correo de otras naciones, entrar en los mismos, anclar y permanecer en ellos, y repararse, sujetos siempre á las leyes y estatutos de los dos paises, respectivamente.

Por el derecho de entrar en parages, puertos, y rios de que se hace relacion en este Articulo, no está comprendido el privilegio del comercio de escala y cabotage, que unicamente será permitido a buques nacionales de pais donde se hiciere semejante comercio.

ARTICULO III

Siendo la intencion de las dos Altas Partes Contratantes el obligarse por los Articulos precedentes a tratarse la una a la otra en los mismos terminos que á la nacion mas favoricida, por el presente convienen mutuamente en que cualquier favor, privilegio, ó inmunidad, de cualquiera especie que fuere que en materias de comercio y navegacion haya concedido actualmente ó pueda en ade-

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jects or citizens of any other State, shall be extended to the subjects or citizens of the other High Contracting Party, gratuitously, if the concession in favor of that other nation shall have been gratuitous; or in return for a compensation as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concession shall have been conditional.

ARTICLE IV

No higher nor other duties shall be imposed on the importation into the territories of the United States, of any article being of the growth, produce or manufacture of the Republic of Costarica and no higher or other duties shall be imposed on the importation into the territories of the Republic of Costarica of any articles being the growth, produce or manufacture of the territories of the United States than are or shall be payable on the like articles, being the growth produce or manufacture of any other foreign country; nor shall any other or higher duties or charges be imposed in the territories of either of the High Contracting Parties, on the exportation of any articles to the territories of the other, than such as are or may be payable on the exportation of the like articles to any other foreign country, nor shall any prohibition be imposed

lante conceder, alguna de las Partes Contratantes á los subditos ó ciudadanos de otra nacion cualquiera se hara extensivo á los subditos ó ciudadanos de la otra Alta Parte Contratante gratiutamente, siempre que la concesion en favor de la otra nacion hubiere sido gratiuta; pues siendo condicional, en tal caso por mutuo convenio se acordará una compensacion equivalente, cuanto sea posible y proporcionada, asi en el valor como en los resultados.

ARTICULO IV

No se impondrán otros ó mas altos derechos á la importacion en los territorios de la Republica de Costarica, de cualesquiera articulos del producto natural, producciones, ó manufacturas de los territorios de los Estados Unidos, ni se impondrán otros o mas altos derechos á la importacion en los territorios de los Estados Unidos de cualesquiera articulos del producto natural, producciones, ó manufacturas de la República de Costarica, que los que se paguen ó pagaren por semejantes articulos, cuando sean producto natural, producciones, ó manufacturas de cualquiera otro pais estrangero; ni se impondrán otros ó mas altos derechos ó impuestos en los territorios de cualquiera de las Altas Partes Contratantes á la exportacion de cualesquiera articulos para los territorios de la otra, que los que se pagan ó pagaren por la exportacion de iguales articulos para

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upon the exportation or importation of any articles the growth produce or manufacture of the territories of the United States, or of the Republic of Costarica to or from the said territories of the United States, or to or from the Republic of Costarica, which shall not equally extend to all other nations.

cualquiera otro pais estrangero; ni se impondrá prohibicion alguna á la exportacion de cualesquiera articulos del producto natural, producciones ó manufacturas de los territorios de la República de Costarica ó de los territorios de los Estados Unidos para los dichos, ó de los dichos territorios de la República de Costarica; ó para los dichos, ó de los dichos territorios de los Estados Unidos, que no se extiendan igualmente á todas las otras naciones.

ARTICLE V

No higher nor other duties or payments on account of tonnage of light or harbor dues, of pilotage, of salvage in case either of damage or shipwreck, or on account of any other local charges, shall be imposed in any of the ports of the Republic of Costarica on vessels of the United States, than those payable in the same ports by Costarican vessels; nor in any of the ports of the United States, on Costarican vessels, than shall be payable in the same ports on vessels of the United States.

ARTICULO V

No se impondrán otros ni mas altos direchos ni pagos por razon de toneladas, fanal, emolumentos de puerto, práctico, derecho de salvamento en caso de pérdida ó naufragio, ni por razon de algunas otras cargas locales en ninguno de los puertos de los Estados Unidos á los buques Costaricenses, sinó los que unicamente pagan en los mismos los buques de los Estados Unidos; ni en los puertos de la Republica de Costarica se impondrán á los buques de los Estados Unidos, otras cargas que las que, en los mismos puertos pagan los Costaricenses.

ARTICLE VI

The same duties shall be paid on the importation into the territories of the Republic of Costarica, of any article being of the growth, produce or manufacture of the territories of the United States whether such importation

ARTICULO VI

Se pargarán los mismos direchos de importacion en los territorios de los Estados Unidos por los articulos de productos naturales, producciones y manufacturas de la Republica de Costarica, bien sean importados en buques de los

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shall be made in Costarican or in vessels of the United States; and the same duties shall be paid on the importation into the territories of the United States of any article, being the growth, produce or manufacture of the Republic of Costarica, whether such importations shall be made in United States or in Costarican vessels.

The same duties shall be paid, and the same bounties and drawbacks allowed, on the exportation to the Republic of Costarica, of any articles being the growth, produce or manufacture of the territories of the United States whether such exportations shall be made in Costarican or in United States vessels; and the same duties shall be paid, and the same bounties and drawbacks allowed, on the exportation of any articles, being the growth, produce or manufacture of the Republic of Costarica to the territories of the United States, whether such exportation shall be made in United States or in Costarican vessels.

ARTICLE VII

All merchants, commanders of ships and others citizens of the United States shall have full liberty in all the territories of the Republic of Costarica, to manage their own affairs themselves, or to commit them to the management of whomsoever they please, as

Estados Unidos ó Costaricenses; y los mismos direchos se pagarán por la importacion en los territorios de la República de Costarica, de las manufacturas, efectos y producciones de los territorios de los Estados Unidos, aunque su importacion sea en buques Costaricenses ó de los Estados Unidos.

Los mismos derechos pagarán, y gozarán las mismas franquicias y descuentos concedidos á la exportacion para los territorios de los Estados Unidos, cualesquiera articulos de los productos naturales, producciones, ó manufacturas de la República de Costarica, ya sea que la exportacion se haga en buques de los Estados Unidos ó Costaricenses; y pagarán los mismos derechos, y se concederán las mismas franquicias y descuentos á la exportacion para la Republica de Costarica de cualesquiera articulos de los productos naturales producciones, ó manufacturas de los territorios de los Estados Unidos, sea que esta exportacion se haga en buques Costaricences ó de los Estados Unidos.

ARTICULO VII

Todo commerciante, comandante de buque y otros ciudadanos de la Republica de Costarica, gozarán de libertad completa en todos los territorios de los Estados Unidos para manejar por si sus propios negocios, ó para encargar su manejo á quien mejor

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broker, factor, agent, or interpreter; nor shall they be obliged to employ any other persons in those capacities than those employed by Costaricans, nor to pay them any other salary or remuneration than such as is paid in like cases by Costarican citizens; and absolute freedom shall be allowed in all cases to the buyer and seller to bargain and fix the price of any goods, wares, or merchandize imported into or exported from the Republic of Costarica as they shall see good, observing the laws and established customs of the country. The same privileges shall be enjoyed in the territories of the United States by the citizens of the Republic of Costarica under the same conditions.

The citizens of the High Contracting Parties shall reciprocally receive and enjoy full and perfect protection for their persons and property and shall have free and open access to the courts of justice in the said countries, respectively for the prosecution and defence of their just rights; and they shall be at liberty to employ in all cases, the advocates, attorneys, or agents of whatever description, whom they may think proper, and they shall enjoy in this respect the same rights and privileges therein as native citizens.

les perezca, sea corredor, factor, agente, ó intérprete; y no se les obligara á emplear para estos objetos á ninguna otra persona mas que las que se emplean por los ciudadanos de los Estados Unidos, ni estarán obligados á pagarles mas salario ó remuneracion que la que en semejantes casos se paga por ciudadanos de los Estados Unidos; y se concederá libertad absoluta en todos casos al comprador y vendedor para ajustar y fijar el precio de cualesquiera efectos, mercaderias, y géneror importados ó exportados de la Republica de Costarica, como crean conveniente, conformándose con las leyes y costumbres establecidas en el pais. Los mismos privilegios disfrutarán en los territorios de la República de Costarica los ciudadanos de los Estados Unidos y sujetos á las mismas condiciones.

Los ciudadanos de las Altas Partes Contratantes recibirán y gozarán reciprocamente de completa y perfecta proteccion en sus personas y propiedades, y tendrán libre y facil acceso á los tribunales de justicia en los referidos paises, respectivamente, para la prosecucion y defensa de sus justos derechos; y estarán en libertad de emplear en todos casos los abogados procuradores, ó agentes de cualquier clase, que juzguen conveniente; y gozarán en este respecto, los mismos derechos y privilegios que alli disfrutaren los ciudadanos nativos.

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ARTICLE VIII

In whatever relates to the police of the ports, the lading and unlading of ships, the safety of merchandize, goods and effects, the succession to personal estates by will or otherwise, and the disposal of personal property of every sort and denomination, by sale, donation, exchange, testament, or in any other manner whatsoever, as also the administration of justice; the citizens of the two high contracting parties, shall reciprocally enjoy the same privileges, liberties and rights, as native citizens, and they shall not be charged in any of these respects, with any higher imposts or duties than those which are paid or may be paid by native citizens; submitting of course to the local laws and regulations of each country, respectively.

If any citizen of either of the two High Contracting Parties shall die without will or testament in any of the territories of the other, the Consul-General or Consul of the nation to which the deceased belonged, or the representative of such Consul-General or Consul in his absence, shall have the right to nominate curators to take charge of the property of the deceased, so far as the laws of the country will permit, for the benefit of the lawful heirs and creditors of the deceased; giving

ARTICULO VIII

Por lo que toca á la policia de los puertos, á la carga y descarga de buques, la seguridad de las mercancias, bienes y efectos, la sucesion de las propiedades personales por testamento, o de otro modo, y al derecho de disponer de la propiedad personal, de cualquiera clase ó denominacion, por venta, donacion, permuta, testamento, ó de otro modo cualquiera, asi como tambien á la administracion de justicia; los ciudadanos de las dos Altas Partes Contratantes gozarán, reciprocamente los mismos privilegios, libertades, y derechos, que si fueran ciudadanos nativos, y no se les cargará en ninguno de estos puntos ó casos, mayores impuestos ó derechos que los que pagan, o en adelante pagaren los ciudadanos nativos, sujetos por supuesto á las leyes y estatutos locales de cada pais, respectivamente.

En caso que murire algun ciudadano de cualquiera de las dos Altas Partes Contratantes, sin haber hecho su ultima disposicion ó testamento, en cualquiera de los territorios de la otra, el Consul-General ó el Consul de la nacion á que pertenecia el difunto, ó en su aucencia, el que representare á dicho Consul-General ó Consul tendrá el derecho de nombrar curadores, que se encarguen de la propiedad del difunto, en cuanto las leyes del pais lo permitieren, á beneficio de los legitimos here-

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proper notice of such nomination to the authorities of the country.

ARTICLE IX

The citizens of the United States residing in the Republic of Costarica, and the citizens of the Republic of Costarica residing in the United States, shall be exempted from all compulsory military service whatsoever, either by sea or by land, and from all forced loans or military exactions or requisitions; and they shall not be compelled, under any pretext whatsoever, to pay other ordinary charges, requisitions or taxes, greater than those that are paid by native citizens of the Contracting Parties respectively.

ARTICLE X

It shall be free for each of the two High Contracting Parties to appoint Consuls for the protection of trade, to reside in any of the territories of the other Party; but before any Consul shall act as such, he shall, in the usual form be approved and admitted by the Government to which he is sent; and either of the High Contracting Parties may except from the residence of Consuls such particular places as they judge fit to be excepted. The Costarican Diplomatic Agents and Consuls shall enjoy in the territories of the United States whatever privileges, exemptions, and immunities are

deros y acreedores del difunto; dando noticia conveniente á las autoridades del pais.

ARTICULO IX

Los ciudadanos de los Estados Unidos residentes en la República de Costarica y los ciudadanos de la República de Costarica residentes en los Estados Unidos estarán exentos de todo servicio militar forzado de cualquier especie, de mar ó de tierra y de todo préstamo forzoso, ó exacciones militares, ó requisiciones; ni serán compelidos á pagar, bajo ningun pretexto, cualesquiera cargos ordinarios, requisiciones, ó impuestos mayores que los que paguen los ciudadanos nativos de las Partes Contratantes, respectivamente.

ARTICULO X

Cada una de los dos Altas Partes Contratantes podrá nombrar Cónsules para la proteccion del comercio, que residan en cualquiera de los territorios de la otra Parte; pero ántes que ningun Cónsul funcione como tal, deberá ser aprobado y admitido en la forma acostumbrada, por el Gobierno, á quien se dirige; y cualquiera de las Altas Partes Contratantes puede exceptuar de la residencia de Cónsules aquellos puntos particulares en que no tengan por conveniente admitirlos. Los Agentes Diplomáticos y los Cónsules de la Republica de Costarica gozarán en los territorios de

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or shall be granted to agents of the same rank belonging to the most favored nation; and in like manner the Diplomatic Agents and Consuls of the United States in the Costarican territories, shall enjoy according to the strictest reciprocity whatever privileges, exemptions and immunities are or may be granted in the Republic of Costarica to the Diplomatic Agents and Consuls of the most favored nation.

los Estados Unidos de todos los privilegios, exenciones, é imunidades concedidas, ó que se concedieren, á los agentes de igual rango de la nacion mas favoricida; y del mismo modo, los Agentes Diplomaticos y Cónsules de los Estados Unidos. en los territorios de la República de Costarica gozarán, conforme á las mas exacta reciprocidad, todos los privilegios, exenciones, é inmunidades que se conceden ó en adelante se concedieren, à los Agentes Diplomáticos y Cónsules de la nacion mas favoricida, en la República de Costarica

ARTICLE XI

For the better security of commerce between the citizens of the United States and the citizens of the Republic of Costarica, it is agreed, that if at any time any interruption of friendly intercourse, or any rupture should unfortunately take place between the two High Contracting Parties, the citizens of either of the two High Contracting Parties who may be within any of the territories of the other, shall, if residing upon the coasts, be allowed six months, and if in the interior, a whole year to wind up their accounts and dispose of their property; and a safe conduct shall be given them to embark at the port which they themselves shall select; and even in the event of a rupture all such citizens of either of the two High

ARTICULO XI

Para mayor seguridad del comercio entre los ciudadanos de los Estados Unidos y los ciudadanos de la República de Costarica se estipula, que si en algun tiempo occurriere desgraciadamente una interrupcion en las relaciones amistosas, y se efectuare un rompimiento entre las dos Altas Partes Contratantes se concederán á los ciudadanos de cualquiera de las dos Altas Partes Contratantes que estén dentro de los territorios de la otra, si residen en las costas, seis meses, y un año entero á los á los que residan en el interior, para arreglar sus negocios, y disponer de sus propiedades; y se les dará un salvo conducto para que se embarquen en el puerto que ellos elijieren; y aun en caso de un rompimiento, todos aquellos ciudadanos de cualquiera de las dos

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Contracting Parties who are established in any of the territories of the other, in the exercise of any trade or special employment, shall have the privilege of remaining and of continuing such trade and employment therein without any manner of interruption, in the full enjoyment of their liberty and property as long as they behave peaceably, and commit no offence against the laws; and their goods and effects of whatever description they may be, whether in their own custody or entrusted to individuals or to the State, shall not be liable to seizure or sequestration, nor to any other charges or demands than those which may be made upon the like effects or property belonging to the native citizens of the country in which such citizens may reside. In the same case debts between individuals, property in public funds, and shares of companies, shall never be confiscated, sequestered nor detained.

Altas Partes Contratantes que estén establecidos en cualquiera de los territorios de la otra, en el ejercicio de algun tráfico ú occupacion especial, tendrán el privilegio de permanecer y continuar dicho tráfico y ocupacion en el referido pais, sin que se les interrumpa en manera alguna en el goze absoluto de su libertad y de sus bienes, mientras se conduzcan pacificamente, y no cometan ofensa alguna contra las leyes; y sus bienes y efectos de cualquiera clase que sean, bien que estén bajo su propia custodia, ó confiados á individuos ó al Estado, no estearán sujetos a embargo ó secuestro, ni á ninguna carga ó imposicion que la que se haga con respecto á los efectos ó bienes pertenecientes á los ciudadanos del pais en que dichos ciudadanos residan. De igual modo ó en el mismo caso, ni las deudas entre particulares, ni los fondos públicos ni las acciones de compañias serán jamas confiscadas, secuestradas, ó detenidas.

Article XII

The citizens of the United States and the citizens of the Republic of Costarica, respectively, residing in any of the territories of the other party shall enjoy in their houses, persons, and properties, the protection of the Government, and shall continue in possession of the guarantees which they now enjoy. They shall not be disturbed,

Articulo XII

Los ciudadanos de la República de Costarica y los ciudadanos de los Estados Unidos que residan en cualquiera de los territorios de la otra Parte, gozarán reciprocamente en sus casas, personas, y bienes, de la proteccion del Gobierno, y continuarán en posesion de las garantias que actualmente tienen. No serán inquietados molestados ni perturbados en ma-

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molested or annoyed in any manner on account of their religious beleif, nor in the proper excercise of their religion, either within their own private houses, or in the places of worship destined for that purpose, agreably to the system of tolerance established in the territories of the two High Contracting Parties; provided they respect the religion of the nation in which they reside, as well as the constitution, laws and customs of the country. Liberty shall also be granted to bury the citizens, of either of the two High Contracting Parties who may die in the territories aforesaid, in burial-places of their own which in the same manner may be freely established and maintained; nor shall the funerals or sepulchres of the dead be disturbed in any way or upon any account.

nera alguna, en razon de su creencia religiosa ni en los ejercicios propios de su religion, ya dentro de sus casas particulares, ó en los lugares del culto destinados para aquel objeto conforme al sistema de tolerancia establecido en los territorios de los dos Altas Partes Contratantes; con tal que respeten la religion de la nacion en que residan asi como la constitucion, leyes y costumbres establecidas. Tendrán tambien libertad de enterra á los ciudadanos de cualquiera de las dos Altas Partes Contratantes que murieren en los referidos territorios, en sus propios cementerios, que podrán del mismo modo libremente establecer y mantener; y no se molestarán los funerales ni los sepulcros de los muertos, de nigun modo ni por motivo alguna.

Article XIII

In order that the two High Contracting Parties may have the opportunity of hereafter treating and agreeing upon such other arrangements as may tend still further to the improvement of their mutual intercourse, and to the advancement of the interests of their respective citizens, it is agreed that at any time after the expiration of seven years from the date of the exchange of the ratifications of the present Treaty, either of the High Contracting Parties shall have the right of

Articulo XIII

Para que las dos Altas Partes Contratantes tengan en lo futuro oportunidad de tratar y ajustar cualesquiera otros arreglos que tiendan aun mas eficazmente á estrechar las relaciones existentes y al adelanto de los interesses de los respectivos ciudadanos, se ha convenido que en cualquier tiempo, pasados siete años desde la fecha en que se cangéen las ratificaciones del presente Tratado, cualquiera de las dos Altas Partes Contratantes podrá poner en conocimiento de la otra Parte sus

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giving to the other Party notice of its intention to terminate Articles IV, V & VI of the present Treaty; and that at the expiration of twelve months after such notice shall have been received by either Party from the other, the said Articles, and all the stipulations contained therein shall cease to be binding on the two High Contracting Parties.

intenciones de terminar los Articulos IV, V y VI del presente Tratado; y que al espirar un año desde que una de las Partes haya recibido de la otra dicha noticia, los espresados Articulos, y todo su contenido, dejarán de ser obligatorios á las dos Altas Partes Contratantes.

ARTICLE XIV

The present Treaty shall be ratified, and the ratifications shall be exchanged at Washington or at San José de Costarica within the space of one year, or sooner if possible.

ARTICULO XIV

El presente Tratado será ratificado, y las ratificaciones cambiadas en San José de Costarica ó en Washington en el término de un año, ó ántes si posible fuese.

In witness whereof the respective Plenipotentiaries have signed the same and have affixed thereto their respective seals.

Done at Washington this tenth day of July, in the year of our Lord one thousand eight hundred and fifty one.

DAN[l] WEBSTER [Seal]

F. MOLINA [Seal]

En fé de lo cual los respectivos Plenipotenciarios han firmado el presente sellándolo con sus sellos respectivos.

Fecho en la Ciudad de Washington á los diez dias del mes de Julio, ——, del año del Señor mil ochocientos cincuenta y uno.

F. MOLINA [Seal]

DAN[l] WEBSTER [Seal]

NOTES

The signed original of this treaty, a single example of which is in the treaty file, is written in English and Spanish, with the English version on the left-hand pages and the Spanish (rather carelessly written) on the right. As the printed text shows, the principle of the *alternat* was duly observed except in Articles 9, 10, and 11. Following the heading of the treaty is the invocation, "In the Name of the Most Holy Trinity"; some comments as to the use of such an invocation are to be found in the notes to the treaty with Sweden and Norway of July 4, 1827 (Document 55).

Except for the attested resolution of advice and consent of the Senate of March 11, 1852 (Executive Journal, VIII, 372), the treaty file is complete. It includes, besides the original treaty above men-

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tioned, the duplicate United States instrument of ratification of May 25, 1852, in customary form, signed by President Fillmore and countersigned by William Hunter,[1] then Chief Clerk, as Acting Secretary of State; the original Costa Rican instrument of ratification of March 22, 1852, which is described below; one example, in English, of the certificate of the exchange of ratifications at Washington on May 26, 1852; and the original proclamation, of the same date and in customary form, the countersignature thereof being the same as that of the duplicate United States instrument of ratification. The attested resolution of the Senate of March 11, 1852, is bound in D.S., Miscellaneous Letters, March 1852.

Relations with Costa Rica

This was the first treaty negotiated between the United States and the Republic of Costa Rica. Under the Constitution of November 22, 1824, Costa Rica united with the states of El Salvador, Guatemala, Honduras, and Nicaragua in the Central American Federation; and with that Federation the United States entered into the Treaty of Peace, Amity, Commerce, and Navigation of December 5, 1825 (Document 50); but that treaty, except for "those parts which relate to peace and friendship", terminated on August 2, 1838; a treaty of renewal was signed on July 14, 1838, but failed to go into force (D.S., Unperfected U5).

The Central American Federation reached practical dissolution in 1839; and on August 30, 1848, the Costa Rican Congress made a definitive declaration of the sovereignty and independence of the Republic of Costa Rica. Intelligence of this declaration was communicated to Secretary of State Buchanan in a note of September 5, 1848, from the Minister for Foreign Affairs of Costa Rica (D.S., Miscellaneous Letters, January–February 1849, enclosure to a letter of D. T. Brown dated January 15, 1849).

The first instructions, of May 1, 1849, to Ephraim George Squier, who was appointed Chargé d'Affaires to Guatemala on April 2, 1849, referred to the above-mentioned declaration of the independence of Costa Rica and enclosed a copy of the note of the Costa Rican Minister for Foreign Affairs of September 5, 1848 (D.S., 15 Instructions, American States, 64–94). Squier was furnished with a letter of credence to the Costa Rican Minister for Foreign Affairs under date of May 1, 1849 (D.S., 3 Credences, 269), and also a full power, under date of April 24, 1849, authorizing him "to agree, treat, consult and negotiate of and concerning general commerce between the United States and the Republic of Costa Rica and claims of Citizens of the United States upon the late Government of Central America, and upon the Government of Costa Rica, and to conclude and sign

[1] Of Rhode Island, and styled in some of the records William Hunter, Jr.; his father, William Hunter, who died in 1849, was Senator from Rhode Island from 1811 to 1821 and afterwards Chargé d'Affaires and Minister Plenipotentiary to Brazil; the son served in the Department of State in various capacities from 1829 until his death in 1886.

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a Treaty or Treaties, Convention or Conventions touching the premises" (*ibid.*, 267); the date of formal recognition by the United States of Costa Rica as a separate state cannot be placed later than April 24, 1849, the date of that full power (cf. the statement in Senate Document No. 40, 54th Congress, 2d session, serial 3469, pp. 11–12, summarized in Moore, Digest, I, 92).

Squier entered into correspondence with the Minister for Foreign Affairs of Costa Rica in June 1849; but the result was argument and discord; and it seems that Squier neither presented himself in person nor transmitted his letter of credence to the Government of Costa Rica. Copies of the notes exchanged are enclosures with Squier's despatches of October 12 and December 13, 1849 (D.S., 2 Despatches, Guatemala, No. 6, enclosures, and No. 13, enclosures G and H).

The first Minister Plenipotentiary of Costa Rica at Washington was Felipe Molina, who was received by President Fillmore and presented his credentials on March 24, 1851 (D.S., 1 Notes to the Central American Legations, 9); the first Minister of the United States to Costa Rica was Solon Borland, of Arkansas, who was appointed on April 18, 1853, and was accredited also to El Salvador, Guatemala, Honduras, and Nicaragua.

The Negotiations

Proposals of a treaty between the United States and Costa Rica were made in London in 1850. The Plenipotentiary of Costa Rica who signed this treaty, Felipe Molina, was then in Europe on a mission for his Government. Writing on February 22, 1850, Abbott Lawrence, Minister at London, enclosed copies of the following correspondence (D.S., 60 Despatches, Great Britain, No. 35, enclosures):

[*Mr. Molina to Mr. Lawrence*]

81 Gloucester Terrace Hyde Park
21st February 1850.

Sir. I have the honor to assure Your Excellency by writing, that my Government will accept any arrangement which the United States may enter into with Great Britain, for the purpose of settling through a combined arbitration of both Powers, the question of boundaries now existing between Costa Rica, and Nicaragua

I beg likewise to state that I am authorised for the adjustment of a Treaty of Amity, Commerce, and Navigation between our respective Countries, and if your Excellency has no objection, we could do it here in London.

I take this opportunity to assure you of the high consideration with which I am,
Your Excellency's Most obedient, humble servant,
(Signed) F. Molina.

To The Honorable Abbott Lawrence,
Minister Plenipotentiary of the United States to Her Britannic Majesty, &c. &c. &c.
138 Piccadilly

[*Mr. Lawrence to Mr. Molina*]

138 Piccadilly, *22d Febr 1850.*

Sir. I have the honor to acknowledge the receipt of your note of yesterday, accepting in the name of Costa Rica the arbitration of the United States and

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Great Britain in the settlement of the questions of boundaries now existing between that State and Nicaragua, and offering to negotiate a treaty of Amity, Commerce, and Navigation, between Costa Rica and the United States.

Having no authority to conclude such a treaty, I have this day transmitted a copy of your note to Washington, that the subject may be brought to the notice of my Government.

The negotiations between the United States and Great Britain relative to Central America, I think, will soon be brought to a close: and I can see no reason, at present, why the United States should not conclude with Costa Rica such a treaty as you propose.

I have the honor to be Sir, With great consideration,
Your obedient servant

(Signed) ABBOTT LAWRENCE.

F. MOLINA Esqr
&c. &c. &c.

On July 25, 1850, Lawrence wrote further regarding the conversations which had taken place and again enclosed copies of the notes of February 21 and 22. Relevant passages from the despatch of that date are excerpted (D.S., 61 Despatches, Great Britain, No. 68):

When I was engaged on the Central American Negotiations, I frequently saw and conversed with the Chargés d'affaires of Nicaragua and of Costarica. The Representative of the latter Republic, M. Felipe Molina, has been accredited as a Diplomatic Agent to the United States, and has, in addition, been empowered to negotiate a Treaty of Friendship, Commerce and Navigation with the United States. . . .

On the 20th of February, (the day before his note to me,) M. Molina had exchanged the ratifications of such a treaty with Her Majesty's Government. Since then he has been in Spain, and concluded a treaty with that Government; and I also learn that a Treaty has been entered into between Costa Rica and France. He has now returned, and yesterday called upon me to know whether I had received a reply to his proposition, and to exhibit his powers, which I have examined and find satisfactory. He left with me a copy of the Treaty concluded with England, which he proposes to make the model substantially of the one he proposes to conclude with us. I send it herewith for your inspection. I have myself carefully examined its provisions, and can see no objection to adopting it as the basis, should the President desire to enter into Treaty Stipulations with that Republic. I earnestly hope the President will deem it advisable to do so. The great changes taking place in the Commerce of the World from our occupation of the Shores of the Pacific, the large products of Gold in California, and the prospect of a ship canal connecting the Atlantic with the Pacific Ocean, greatly increase the importance of all the Central American States. Our people will find their way into all of them; particularly into those through which the canal will pass. The proximity of The United States to this fertile country cannot fail to create intimate personal relations between us—such as, rightly cultivated, will be greatly to the advantage to both Countries. The tide of Commerce, under the impetus that must be given to it almost immediately, will set towards Europe unless we take speedy measures to carry it to our borders. In this connection I beg most respectfully to ask the special attention of the President to our Commercial Relations with these States. I shall be happy to conclude a treaty with Mr. Molina, if the President thinks best to give me powers to that effect. Mr. Molina tells me that he is unable to visit Washington, and hopes the minister at this Court may be entrusted with the authority necessary for the accomplishment of so desirable an object.

In the foregoing despatch Lawrence refers to three treaties made by Costa Rica with European powers. These are the Treaty of Friendship, Commerce, and Navigation with Great Britain signed at San José November 27, 1849 (British and Foreign State Papers, XXXVII, 20–32); the convention with France signed at Guatemala

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March 12, 1848, which took the form of accession to the Treaty of Friendship, Commerce, and Navigation between France and Guatemala of March 8, 1848 (*ibid.*, 1364–77); and the Treaty of Recognition, Peace, and Friendship between Costa Rica and Spain signed at Madrid May 10, 1850 (translation in *ibid.*, XXXIX, 1340–46). The treaty made by Costa Rica with Great Britain of November 27, 1849, is almost word for word the treaty between Great Britain and Guatemala of February 20, 1849, the latter, however, having an additional article which is absent from the former (*ibid.*, XXXVII, 32–45).

In a brief instruction of August 10, 1850, which acknowledged the despatch of Lawrence of July 25, 1850, Secretary of State Webster wrote that "The subject of a treaty with Costa Rica will receive due consideration at no distant day; and, in the mean time, it is proper to say that objections are perceived to opening a negotiation at London" (D.S., 16 Instructions, Great Britain, 95).

There is very little record in the archives of the Department of State regarding the negotiations at Washington. In a note of March 27, 1851, Molina proposed a treaty of amity, commerce, and navigation "on the same principles of reciprocity and general advantages adopted in Treaties with other Nations" (D.S., 2 Notes from the Central American Legations); to this Secretary of State Webster replied under date of June 9, 1851, stating that "the wish of the government of Costa Rica" was "reciprocated" and that "The President has accordingly empowered me to enter upon negotiations with you" (D.S., 1 Notes to the Central American Legations, 11).

It is obvious that the basis of the negotiation was that mentioned in the despatches of 1850 from London, namely, the treaty between Costa Rica and Great Britain of November 27, 1849, for fourteen of the sixteen articles of that treaty are copied *mutatis mutandis* in this treaty. The two articles of the treaty with Great Britain which were omitted are Article 3, for the application of the treaty in British territories outside of Europe, and Article 14, in aid of the abolition of the slave trade.

The Full Powers

The original full power to Molina, under date of April 15, 1850, which is in D.S., 2 Notes from the Central American Legations, authorized not only the signature of a treaty of amity and commerce but also the signature of an agreement either in the form of a treaty, an exchange of notes, or a protocol, accepting on the part of Costa Rica the mediation of the United States and Great Britain with regard to the boundary differences between Costa Rica and Nicaragua. That full power reads as follows (translation from the Spanish):

Juan Rafael Mora, President of the Republic of Costa Rica

Being desirous of establishing frank and friendly relations with the Republic of the United States of the North, I have been pleased to choose, appoint, and authorize Don Felipe Molina, Minister Plenipotentiary of the Republic, as I do choose, appoint, and authorize him by these presents, to conclude a treaty of amity and commerce with the Government of the aforesaid Republic of the

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United States, or with the person whom the latter may choose and appoint, or with its Minister resident in London. I likewise authorize the said Minister Don Felipe Molina to accept the mediation proposed by the Government of the United States for the laudable purpose of settling, by peaceable and conciliatory means, in concert with the Government of Her Britannic Majesty, the differences concerning territorial boundaries that have arisen between the Republic of Costa Rica and the State of Nicaragua, with the corresponding authority to negotiate and sign any agreement or treaty of acceptance, in case consent expressed by means of a note or signature to a protocol should not be deemed sufficient. It is understood that if such acceptance should be given by means of a treaty, the latter as well as that of amity and commerce must be submitted to the Congress for its approval; but if it should consist only of a note, agreement, or protocol, it does not require any approval and will be considered as valid, to take effect.

In faith whereof I sign this full power, authorized by the Minister of Foreign Relations and sealed with the seal of the Republic.

Given at San José, capital of the Republic, on the fifteenth day of April, one thousand eight hundred and fifty.

[Seal] JUAN R. MORA

JQ BERNdo CALVO [Seal]

Recorded Book 2, p. 83.

No record of a full power to Secretary of State Webster for the negotiation of this treaty has been found in the archives of the Department of State, and no reference thereto other than the mention of communication of full powers in the preamble of the treaty and the statement, above quoted, in Webster's note to Molina of June 9, 1851, that he was "empowered" by the President.

THE SENATE PROCEEDINGS

No correspondence or other papers accompanied this treaty when it was submitted to the Senate with the presidential message of December 12, 1851 (Executive Journal, VIII, 337). The treaty was reported from the Committee on Foreign Relations on March 5, 1852, without amendment (*ibid.*, 371); and the Senate resolution of advice and consent was adopted by unanimous vote on March 11, 1852 (*ibid.*, 372). Ratification on the part of the United States followed under date of May 25, 1852.

THE COSTA RICAN RATIFICATION

The Costa Rican instrument of ratification, under date of March 22, 1852, is in the treaty file. The opening and final clauses of the ratification, in Spanish and in conventional form, are written on both the left- and the right-hand pages of the instrument; on the right-hand pages those clauses embody the Spanish version of the treaty and are followed by the signatures to the instrument and the great seal of the Republic of Costa Rica; on the left-hand pages those clauses similarly precede and follow the English version of the treaty, but they are followed by copies of the signatures and indication of the seal.

THE EXCHANGE OF RATIFICATIONS

Article 14 of the treaty provided that the exchange of ratifications should take place "at Washington or at San José de Costarica".

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The United States had no diplomatic agent at the capital of Costa Rica at the time; and it appears that the Costa Rican instrument of ratification was transmitted to Washington prior to ratification of the treaty by the United States. The ratifications were exchanged at Washington on May 26, 1852, by William Hunter, Acting Secretary of State, and Felipe Molina, Minister of Costa Rica. The certificate of the exchange, one example whereof, in English, is in the treaty file, states that "the respective ratifications of the said Treaty" were "carefully compared and found to agree exactly one with the other", but no mention is made of comparison with the signed original.

Article 8

In reply to a despatch of William Laurence Merry, Minister to Costa Rica, of July 29, 1900 (D.S., 66 Despatches, Central America, No. 456), Acting Secretary of State Alvey A. Adee wrote as follows regarding "the Department's interpretation" of Article 8 of this treaty (D.S., 22 Instructions, Central America, 35–36):

> By Article VIII of the Treaty of July 10, 1851, between the United States and Costa Rica, the United States Consul at San Jose has the right to nominate a curator to take charge of the property of an American citizen who has died in Costa-Rica, so far as the laws of that country will permit, for the benefit of the heirs and creditors of the deceased. A curator, in the legal sense of the term, is one who administers the estate of another.
>
> While the curator is nominated by the Consul, the appointment is made by the local authorities in pursuance of that nomination, and the local court has jurisdiction to administer the estate the same as a probate court would do in the United States. The curator thus nominated and appointed is the representative of the estate before the court and in all litigations that may arise, and can therefore guard the estate against exaggerated claims.
>
> In the opinion of the Department, therefore, the proper local Costa-Rican court has the right to assume jurisdiction of the estate for the purposes of its administration, settlement and distribution. The curator is, of course, subject, like an administrator or guardian, to the orders of the court so far as the law authorizes the court to make such orders. The administrator in the United States is required to give a bond for the safe keeping of and accounting for the funds of the estate; and it would be the duty of the curator to obey the order of the court for the depositing and safe keeping of the moneys subject to the jurisdiction and decrees of the court, unless such order was made in excess of the jurisdiction of the court. That, however, is a matter to be determined by the laws of Costa-Rica, and concerning which the curator might properly seek the advice of counsel.
>
> The Department does not understand the effect of the treaty to be to exempt the estates of Americans dying in Costa-Rica from the ordinary liabilities and incidents of decedent's estates. Provision against the waste of such estates was contemplated by the treaty provision which authorizes the Consul or Consul General to nominate the curator; and unless the laws of Costa-Rica prohibit, it would be the duty of the local authorities to appoint the curator thus nominated. The curator thus nominated has the right to take charge of the property in pursuance of the treaty, but not to adjudge and determine between the rights of the estate and of its creditors.

Earlier Treaties with American States

Earlier treaties of friendship, commerce, and navigation between the United States and other American states had, to a very large extent, followed the same general form. The first of those treaties was that with the Republic of Colombia of October 3, 1824 (Docu-

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ment 47); there followed those with the Central American Federation, December 5, 1825 (Document 50); Brazil, December 12, 1828 (Document 64); Mexico, April 5, 1831 (Document 70); Chile, May 16, 1832 (Document 73); Venezuela, January 20, 1836 (Document 80); the Peru-Bolivian Confederation, November 30, 1836 (Document 82); Ecuador, June 13, 1839 (Document 90); New Granada, December 12, 1846 (Document 125); Guatemala, March 3, 1849 (Document 135); and El Salvador, January 2, 1850 (Document 139).

Those eleven treaties were, of course, by no means identical; they included different bases of commercial policy; some of them contained exceptional clauses; but the similarity in effect and even in wording of numerous articles is striking evidence of a continuity of policy.

This treaty with Costa Rica is notably of another type. The wide departure both in form and in content from the precedents will be apparent if one compares the fourteen articles of this treaty with Costa Rica with the thirty-three articles of a treaty made only two years earlier, that with Guatemala of March 3, 1849 (Document 135).

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Treaty Series No. 276
10 Statutes at Large, 926–48
18 *ibid.*, pt. 2, Public Treaties, 612–23

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PERU : JULY 26, 1851

Treaty of Friendship, Commerce, and Navigation, signed at Lima July 26, 1851. Original in English and Spanish.
Submitted to the Senate February 9, 1852. Resolution of advice and consent June 23, 1852. Ratified by the United States July 16, 1852. Ratified by Peru December 1, 1851. Ratifications exchanged at Washington July 16, 1852. Proclaimed July 19, 1852.

The United States of America and the Republic of Peru, being equally animated with the desire to render firm and permanent the peace and friendship which have always so happily subsisted between them, and to place their commercial relations upon the most liberal basis, have resolved to fix clear and precise rules, which shall in future be religiously observed between the two Nations, by means of a Treaty of Friendship, Commerce and Navigation.

To attain this desirable object, the President of the United States of America has conferred Full Powers on John, Randolph Clay, the accredited Chargé d'Affaires of the said States to the Government of Peru, and the President of the Republic of Peru has conferred like Full Powers on Brigadier General, Don Juan, Crisostomo Torrico, Minister of War and the Marine, Minister

La República del Perú y los Estados Unidos de América hallandose igualmente animados con el deseo de hacer firmes y permanentes la paz y amistad que felizmente han subsistido siempre entre ellos, y de colocar sus relaciones de comercio bajo las bases mas liberales: han resuelto fijar reglas claras y precisas, las que se observarán relijiosamente en lo sucesivo entre ambas naciones, por medio de un Tratado de Paz, Comercio y Navegación.

Y para lograr este deseado objeto: el Presidente de la Republica del Perú ha conferido plenos poderes al Jeneral de Brigada D. Juan Crisostomo Torrico, Ministro de Guerra y Marina, Encargado interinamente del Ministerio de Relaciones Exteriores: y el Presidente de los Estados Unidos ha conferido iguales plenos-poderes al Señor Juan Randolph Clay Encargado de Negócios de

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of Foreign Affairs ad interim &c. &c. who, after exchanging their respective Full Powers, found to be in good and due form, have agreed upon and concluded the following Articles:

los Estados Unidos. cerca del Gobierno del Perú: los cuales despues de haber canjeado sus respectivos poderes, y halládolos en buena y debida forma han convenido en los articulos siguientes:

ARTICLE I.

There shall be perfect and perpetual peace and friendship, between the United States of America and the Republic of Peru and between their respective territories, people and citizens, without distinction of persons, or places.

ARTICULO Iº

Habrá perfecta y perpetua paz y amistad entre la República del Perú y los Estados Unidos de América y en entre sus respectivos territorios, pueblos y Ciudadanos sin distincion de persona ó lugares.

ARTICLE II.

The United States of America and the Republic of Peru mutually agree, that there shall be reciprocal liberty of Commerce and Navigation, between their respective territories and citizens; the citizens of either Republic may frequent with their vessels all the coasts, ports and places of the other, wherever foreign commerce is permitted, and reside in all parts of the territories of either and occupy dwellings and warehouses, and every thing belonging thereto shall be respected and shall not be subjected to any arbitrary visits, or search. The said citizens shall have full liberty to trade in all parts of the territories of either, according to the rules established by the respective regulations of Commerce, in all kinds of goods, merchandise, manufactures and produce not

ARTICULO IIº

La República del Perú y los Estados Unidos de América convienen mutuamente en que habrá libertad reciproca de comercio y navegacion entre sus respectivos territorios y ciudadanos; los ciudadanos de cualquiera de las dos repúblicas podrán frecuentar con sus buques todas las Costas, puertos y lugares de la otra en que se permite el Comercio extranjero; residir en cualquier punto de los territorios de la otra y ocupar las casas y almacenes que necesiten; y todo lo que les pertenezca será respetado y exento de toda visita ó pesquisa arbitraria. Dichos ciudadanos gozarán de entera libertad para comerciar en todas partes del territorio de la otra, segun las reglas establecidas por las respectivas leyes de comércio en todo género de efectos, mercade-

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prohibited to all, and to open retail stores and shops, under the same municipal and police regulations as native citizens; and they shall not, in this respect, be liable to any other, or higher taxes, or imposts, than those which are or may be paid by native citizens. No examination, or inspection of their books, papers, or accounts, shall be made, without the legal order of a competent tribunal, or judge. The citizens of either country shall also have the unrestrained right to travel in any part of the possessions of the other, and shall, in all cases, enjoy the same security and protection as the natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing; they shall not be called upon for any forced loan, or occasional contribution, nor shall they be liable to any embargo, or to be detained with their vessels, cargoes, merchandise, goods, or effects, for any military expedition, or for any public purpose whatsoever, without being allowed therefor a full and sufficient indemnification, which shall, in all cases, be agreed upon and paid in advance.

ARTICLE III.

The two High Contracting Parties hereby bind and engage themselves; not to grant any favor, privilege, or immunity whatever, in matters of Comrias, manufacturas y productos de lícito comércio, y abrir tiendas y almacenes por menor sometiendose á las mismas leyes, decretos y usos establecidos para los ciudadanos del pais; y no estarán sujetos á mayores contribuciónes ó impuestos que los que pagan ó deban pagar los naturales. No se examinarán ó inspeccionarán los libros papeles ó cuentas que les pertenezcan sin mandato de un Tribunal ó Juez competente. Los ciudadanos de cualquiera de las dos partes tendrán tambien el derecho ilimitado de viajar por cualquier parte de las posesiones del otro, y en todos los casos gozarán de la misma seguridad y proteccion que los naturales del pais donde residen, con condicion de someterse á las leyes y ordenanzas que en él se observen; no se les exijirá ningun empréstito forzoso ni ninguna contribucion accidental, ni estarán sujetos á ningun embargo ni á que se les detenga con sus buques, cargamentos, mercaderias ó efectos para ninguna expedicion militar ó para cualquier objeto público, sin concederles por ello una cumplida y suficiente indemnizacion que en todo caso se convenga y pague adelantada.

ARTICULO IIIº

Las dos Altas Partes Contratantes se obligan y comprometen á no conceder favor, privilejio ó exencion alguna sobre comercio y navegacion á otras naciones, sin

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merce and Navigation, to other Nations, which shall not be, also, immediately extended to the citizens of the other contracting party, who shall enjoy the same, gratuitously, if the concession shall have been gratuitous, or on giving a compensation as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concession shall have been conditional.

hacerlos extensivos tambien inmediatamente á los ciudadanos de la otra parte contratante, que los gozará gratuitamente si la concesion hubiese sido gratuita, ó mediante igual compensacion, ú otra equivalente, que se arreglará de mútuo acuerdo, si la concesion hubiese sido condicional.

ARTICLE IV

No higher or other duties, or charges, on account of tonnage, lighthouses, or harbour dues, pilotage, quarantine, salvage in case of damage or shipwreck, or any other local charges, shall be imposed in any ports of Peru on vessels of the United States, of the burthen of two hundred tons and upwards, than those payable in the same ports by Peruvian vessels of the same burthen; nor in any of the Ports of the United States, by Peruvian vessels, of the burthen of two hundred tons and upwards, than shall be payable, in the same ports, by vessels of the United States of the same burthen.

ARTICULO IV.

No se exijirán otros ó mas altos derechos en razon de toneladas, faro, puerto, pilotaje, cuarentena y salvamento en casos de avería ó naufrajio, ni otros impuestos locales, en los puertos de la República del Perú á los buques de los Estados Unidos de mas de doscientas toneladas, que los que pagaren en dichos puertos los buques peruanos del mismo porte; ni en los puertos de los Estados Unidos á los buques peruanos de mas de doscientas toneladas, que los que pagaren en los mismos puertos los buques de los Estados Unidos de igual porte.

ARTICLE V.

All kinds of merchandise and articles of Commerce which may be lawfully imported into the ports and territories of either of the High Contracting Parties, in national vessels, may also be so imported in vessels of the other

ARTICULO V.

Toda clase de mercaderias y articulos de Comercio que sean importados legalmente en los puertos y territorio de cualquiera de las Altas Partes Contratantes, en buques nacionales, podrán serlo tambien en los buques de la otra

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party, without paying other or higher duties and charges, of any kind or denomination whatever, than if the same merchandise and articles of commerce were imported in national vessels. Nor shall any distinction be made in the manner of making payment of the said duties or charges.

It is expressly understood, that the stipulations in this and the preceding Article are, to their full extent, applicable to the vessels and their cargoes, belonging to either of the High Contracting Parties, arriving in the Ports and territories of the other, whether the said vessels have cleared directly from the ports of the country to which they appertain, or from the ports of any other nation.

ARTICLE VI.

No higher or other duties, or charges, shall be imposed or levied upon the importation into the ports and territories of either of the High Contracting Parties, of any Article, the produce, growth or manufacture of the other party than are or shall be payable on the like Article, being the produce growth or manufacture of any other country: nor shall any prohibition be imposed upon the importation of any article, the produce, growth or manufacture of either party, into the ports or territories of the other, which shall not equally extend to all other nations.

nacion sin pagar otros ó mas altos derechos é impuestos, cualquiera que sea su denominacion, que si las mismas mercaderias o articulos fuesen importados en buques nacionales. Ni se hará distincion alguna en los pagos de los mencionados derechos ó impuestos.

Queda expresamente convenido que las estipulaciones de este y del articulo anterior son aplicables en toda su estension á los buques y sus cargamentos pertenecientes á cualquiera de las Altas Partes Contratantes que lleguen á los puertos y territorios de la otra, ya sea en el caso de que dichos buques hayan salido directamente de los puertos del pais á que pertenecen ó de los puertos de cualquiera otra Nacion.

ARTICULO VI.

No se exijirán otros ó mas altos derechos á la importacion en los puertos y territorios de cualquiera de las Altas Partes Contratantes, de cualquier articulo, producto ó manufactura de la otra que los que se pagan ó pagaren por el mismo articulo, producto, ó manufactura de cualquier otro pais; ni se impondrá prohibicion alguna á la importacion de cualquier articulo, producto ó manufactura de cada una de las partes á los puertos ó territorios de la otra, sin que la prohibicion se estienda igualmente á todas las demás Naciones.

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ARTICLE VII.

All kinds of merchandise and articles of Commerce which may be lawfully exported from the ports and territories of either of the High Contracting Parties, in national vessels, may also be exported in vessels of the other party and they shall be subject to the same duties only, and be entitled to the same drawbacks, bounties and allowances, whether the same merchandise and Articles of Commerce be exported in vessels of the one party or in vessels of the other party.

ARTICULO VII.

Toda clase de mercaderias y articulos de comercio que puedan exportarse legalmente de los puertos y territorios de cualquiera de las Altas Partes Contratantes en buques Nacionales podrán exportarse tambien en buques de la otra parte pagando estos únicamente los mismos derechos, y gozando de los mismos descuentos, primas y franquicias, que si la misma mercaderia ó los mismos articulos de Comercio se exportasen en buques de la una ó de la otra parte.

ARTICLE VIII.

No changes or alterations in the tariffs of either of the High Contracting Parties, *augmenting* the duties payable upon merchandise or articles of Commerce, of any sort or kind, imported into, or exported from their respective ports, shall be held to apply to the Commerce or navigation of either party, until the expiration of eight calendar months after the said changes or alterations shall have been promulgated and become a law, unless the law or decree, by which such changes or alterations shall be made, contain a prospective provision to the same, or similar effect.

ARTICULO VIII.

Ningun cambio ó alteracion en las tarifas de una ú otra de las Altas Partes Contratantes *aumentando* los derechos que se paguen por las mercaderias ó articulos de comercio de cualquier especie ó clase que sean importados en sus respectivos puertos ó exportados de ellos, se aplicará ó tendrá efecto para el comercio ó la navegación de una ú otra parte hasta que se cumplan ocho meses despues que dichos cambios ó alteraciones se hayan promulgado como ley, á no ser que la ley ó decreto por el que tales cambios ó alteraciones se hagan contenga alguna disposicion que tienda á producir el mismo ó semejante efecto.

ARTICLE IX.

It is hereby declared, that the stipulations of the present treaty

ARTICULO IX.

Se declara así mismo que las estipulaciones del presente tra-

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are not to be understood as applying to the navigation and coasting trade, between one port and another situated in the territories of either contracting Party—the regulation of such navigation and trade being reserved, respectively, by the Parties, according to their own separate laws.

Vessels of either Country shall however be permitted to discharge part of their cargoes at one port open to foreign commerce in the territories of either of the High Contracting Parties, and to proceed with the remainder of their cargo to any other port, or ports, of the same territories, open to foreign commerce, without paying other or higher tonnage dues or port charges, in such cases, than would be paid by national vessels in like circumstances, and they shall be permitted to load in like manner at different ports in the same voyage outwards.

tado no se considerarán aplicables á la navegacion y Comercio de cabotaje, entre un puerto y otro situado en el territorio de cualquiera de las Partes Contratantes, pues la regulacion de este Comercio está reservada respectivamente á las leyes particulares de cada una de las partes.

Sin embargo, los buques de cualquiera de los dos paises podran descargar parte de sus cargamentos en un puerto habilitado para el comercio extranjero perteneciente al territorio de cualquiera de las Altas Partes Contratantes y continuar con el resto de su carga á cualquier otro puerto ó puertos del mismo pais abiertos al Comercio extranjero, sin pagar otros ó mayores derechos de toneladas ó de puerto, que los que pagan en tales casos los buques nacionales en circunstancias análogas; y del mismo modo se les permitirá cargar en diferentes puertos en el mismo viaje para otros paises.

ARTICLE X.

The Republic of Peru desiring to increase the intercourse along its coasts, by means of Steam Navigation, hereby engages to accord to any citizen or citizens of the United States, who may establish a line of Steam vessels, to navigate, regularly, between the different ports of entry, within the Peruvian territories, the same privileges of taking in and landing freight, entering the by-ports for

ARTICULO X.

Deseando la República del Perú aumentar la comunicacion entre los puntos de su costa por medio de la navegacion por Vapor, se compromete desde ahora á conceder á cualquier ciudadano ó ciudadanos de los Estados Unidos que establezcan una linea de Vapores para navegar con regularidad entre los diferentes puertos de entrada en el territorio peruano, los mismos privilejios para

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the purpose of receiving and landing passengers and their baggage, specie and bullion; carrying the public mails, establishing depots for coal, erecting the necessary machine and workshops, for repairing and refitting the Steam vessels; and all other favors enjoyed by any other association or company whatsoever.

It is, furthermore, understood, between the Two High Contracting Parties, that the Steam vessels of either shall not be subject, in the ports of the other Party, to any duties of tonnage, harbor or other similar duties whatsoever, than those that are or may be paid by any other association or Company.

ARTICLE XI.

For the better understanding of the preceding Articles, and taking into consideration the actual State of the commercial marine of Peru, it is stipulated and agreed that every vessel, belonging exclusively to a citizen or citizens of the said Republic, and of which the Captain is also a citizen of the same, though the construction or the crew is, or may be, foreign, shall be considered, for all the objects of this treaty, as a Peruvian vessel.

ARTICLE XII.

The Whale Ships of the United States shall have access to the

embarcar y desembarcar carga ó flete, entrar en los puertos intermedios con objeto de recibir y desembarcar pasajeros y sus equipajes, dinero y plata en barras, llevar las balijas de correos, formar depósitos para Carbon, establecer maquinas y talleres para reparar y carenar los Vapores, y todos los demás favores que goce cualquiera otra sociedad ó compañia.

Convienen además las Altas Partes Contratantes en que los Vapores de cualquiera de ellas no estarán obligados á pagar en los puertos de la otra ninguna clase de derechos de tonelaje, puerto ni otros semejantes que los que pagan ó pagaren los de cualquiera otra sociedad ó compañia.

ARTICULO XI.

Para la mejor inteligencia de los Articulos precedentes y teniendo en consideracion el estado actual de la marina mercante del Perú, se ha estipulado y convenido que todo buque perteneciente exclusivamente á ciudadano ó ciudadanos de dicha República, y cuyo Capitan sea tambien ciudadano de ella, aunque la construccion y tripulacion del buque sean extranjeras, será considerado para todos los efectos de este tratado como buque peruano.

ARTICULO XII.

Los buques balleneros de los Estados Unidos podran entrar en

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port of Tumbez,[1] as well as to the ports of entry in Peru, and may sail from one port to another for the purposes of refreshment and refitting, and they shall be permitted to sell or barter their supplies, or goods, including Oil, to the amount of two hundred dollars, *ad valorem*, for each vessel; without paying any tonnage or harbour dues, or any duties or imposts upon the articles so sold or bartered. They shall be also permitted, with like exemption from tonnage and harbour dues, further to sell or barter, their supplies, or goods, including oil, to the additional amount of one thousand dollars, *ad valorem*, for each vessel; upon paying for the said additional articles, the same duties as are payable upon like supplies, or goods, and oil, when imported in the vessels and by the citizens, or subjects, of the most favored nation.

el puerto de Tumbes,[1] y en los puertos mayores del Perú, y pasar de uno á otro, con el objeto de tomar viveres y repararse, y les será permitido vender ó cambiar sus provisiones ó mercaderias, inclusive el aceite hasta la cantidad de doscientos pesos *ad valorem* por cada buque, sin que estén obligados á pagar los derechos de toneladas ó de puerto, ni derecho alguno ó impuesto por los articulos vendidos ó cambiados de esta manera. Se les permitirá además con la misma excencion de los derechos de toneladas y puerto, vender ó cambiar sus provisiones ó mercaderias, incluso el aceite, hasta la suma adicional de mil pesos *ad valorem* por cada buque, pagando por la parte adicional de dichos articulos los mismos derechos que se satisfacen por iguales provisiones ó mercaderias y aceite cuando se importan en buques y por ciudadanos ó súbditos de la nacion mas favorecida.

ARTICLE XIII.

The merchants, commanders, or masters of vessels and other citizens of either contracting party, shall be wholly free to manage their own business and affairs, in all the ports and places within the jurisdiction of the other, or to commit their business and affairs to the management of any person whom they may choose to appoint, as agent, factor, consignee,

ARTICULO XIII.

Los negociantes, Capitanes de buques y todos los ciudadanos de cada una de las Partes Contratantes tendran en los territorios de la otra plena libertad para manejar por sí sus negócios ó encomendarlos á la persona que quieran emplear como ajente, corredor, factor ó intérprete. No se les obligará á que empleen personas determinadas para el desempeño de

[1] Tumbes is approximately in latitude 3°38′ south.

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or interpreter. They shall not be restrained in the choice of persons to act in such capacities, or be compelled to pay any salary, or remuneration, to any one whom they do not wish to employ. Absolute freedom shall be given, as well with respect to the consignment and sale of their merchandise and articles of commerce, as to the purchase of their returns, unloading, loading and sending off their vessels. The buyer and seller shall have full liberty to bargain together and fix the price of any merchandise, or articles of Commerce, imported into, or to be exported from the territories of either contracting Party, the regulations of Commerce, established in the respective countries, being in every case, duly observed.

ARTICLE XIV.

Peruvian citizens shall enjoy the same privileges, in frequenting the mines and in digging or working for gold, upon the public lands situated in the State of California, as are, or may be hereafter accorded by the United States of America, to the citizens or subjects of the most favored nation.

ARTICLE XV.

The citizens of either of the High Contracting Parties shall have the full power and liberty to dispose of their personal property and effects, of every kind and description, within the jurisdiction of

estos servicios, ni tampoco á dar ningun salario ó remuneracion á quien no quieran ocupar. Gozarán de libertad absoluta, así para consignar y vender sus mercaderias y articulos de comercio, como para comprar los retornos, descargar, cargar y despachar sus buques. El comprador y vendedor tendrán plena libertad para arreglar entre sí y fijar el precio de cualquiera mercancia ó efectos de comercio que se hayan de importar ó de exportar de los territorios de cualquiera de ambas partes Contratantes, observandose en todo caso los reglamentos de Comercio vijentes en los respectivos paises.

ARTICULO XIV.

Los Ciudadanos del Perú gozaran los mismos privilejios que se conceden ó se puedan conceder en adelante por los Estados Unidos de América á los Ciudadanos ó subditos de la nacion mas favorecida cuando concurran á las minas y extraigan ó busquen el oro en las tierras públicas situadas en el Estado de California.

ARTICULO XV.

Los Ciudadanos de cada una de las Partes Contratantes podrán disponer de sus efectos personales dentro de la jurisdiccion de la otra, por venta, donacion, testamento, ó de cualquier otro modo,

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the other, by sale, donation, testament or otherwise; and their heirs or representatives, being citizens of the other party, shall succeed to their said personal property and effects, whether by testament, or *ab intestato*, and may take possession of the same, themselves, or by others acting for them, and dispose of the same at their pleasure, paying such dues, only, as the inhabitants of the country, wherein said effects may be, shall be subject to pay in like cases. Should the property consist of real estate and the heirs, on account of their character as Aliens, be prevented from entering into possession of the inheritance, they shall be allowed the term of three years, to dispose of the same and withdraw and export the proceeds, which they may do, without any hindrance and without paying any other dues or charges, than those which are established by the laws of the country.

ARTICLE XVI.

If any vessel belonging to the citizens of either of the High Contracting Parties should be wrecked, suffer damage, or be left derelict, on or near the coasts within the territories of the other, all assistance and protection shall be given to such vessel and her crew, and the vessel or any part thereof, and all furniture and appurtenances belonging thereto, together with all the merchandise,

y sus herederos ó representantes, sí son Ciudadanos de la otra parte succederán en los susodichos efectos personales, ya sea por testamento ó *ab intestato:* y pueden tomar posesion de ellos, bien por sí mismos, ó por otros que obren en su nombre, y disponer de ellos á su voluntad; pagando únicamente aquellos derechos á que en tales casos estan sujetos los habitantes del pais donde se hallan los efectos precitados. Y sí, en el caso de ser bienes raices, estuviesen impedidos los susodichos herederos de entrar en posesion de la herencia, en razon de ser extranjeros, se les concederá el termino de tres años para que dispongan de ellos segun lo estimen conveniente, y para exportar su producto; lo cual podran hacer sin obstáculo y sin pagar otros derechos ó impuestos que aquellos de que en jeneral imponen las leyes del pais.

ARTICULO XVI.

En caso que un buque perteneciente á ciudadanos de cualquiera de las Partes Contratantes naufragase, sufriese averia, ó fuese abandonado (derelicto) en las costas, ó cerca de las Costas, de la otra, se dará á dicho buque y á su tripulacion toda asistencia y proteccion; y el buque, cualquiera parte de él, todos los articulos que le pertenecen, y las mercaderias que de él se sal-

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which shall be saved therefrom, or the produce thereof, if sold, shall be faithfully restored to the owners, or their agents, they paying only the expenses incurred in the preservation of the property, together with the rate of salvage, which would have been payable in the like case by national vessels; and it shall be permitted for them to unload the merchandise and effects on board, with the proper precautions to prevent their illicit introduction, without exacting in such case any duty, impost or contribution whatever, provided the same be exported.

varen, ó el producto de los mismos, sí se vendieren, serán fielmente entregados á sus dueños ó ajentes, pagando únicamente los gastos hechos para conservar los efectos, y los derechos de salvamento que hubiera pagado en semejante caso un buque nacional. Y se permitirá en este caso descargar las mercaderias ó efectos que se hallen á bordo con las precauciones necesarias para prevenir su ilícita introduccion, sin que se exija ningun impuesto ó contribución, con tal de que sean exportados.

ARTICLE XVII.

When through stress of weather, want of water or provisions, pursuit of enemies or pirates, the vessels of one of the High Contracting Parties, whether of war (public or private) or of trade, or employed in fishing, shall be forced to seek shelter in the ports, rivers, bays and dominions of the other, they shall be received and treated with humanity: sufficient time shall be allowed for the completion of repairs, and while any vessel may be undergoing them, its cargo shall not, unnecessarily, be required to be landed, either in whole or in part: all assistance and protection shall be given to enable the

ARTICULO XVII.

Cuando á causa de mal tiempo, falta de agua ó de víveres, persecucion de enemigos ó de piratas los buques de una de las Altas Partes Contratantes, de guerra ó mercantes, ó empleados en la pesca, se vean obligados á buscar abrigo en los puertos, rios ó lugares de los dominios de la otra, serán recibidos y tratados con humanidad; se les concederá el tiempo suficiente para que terminen sus reparos, y mientras cualquier buque se halle en este caso no se le exijirá que descargue en todo ó en parte, á no ser preciso, prestandole todo favor y proteccion para que se proporcione auxilios y se ponga en

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vessels to procure supplies and to place them in a condition to pursue their voyage, without obstacle or hindrance.

ARTICLE XVIII.

All vessels, merchandise and effects, belonging to the citizens of either of the High Contracting Parties, which may be captured by Pirates, either on the high seas or within the limits of its jurisdiction, and may be carried into, or found in the rivers, roads, bays, ports or dominions of the other, shall be delivered up to the owners or their agents, they proving, in due and proper form, their rights before the competent tribunals; it being understood, that the claim thereto shall be made within two years, by the owners themselves, their agents or the agents of the respective Governments.

ARTICLE XIX.

The High Contracting Parties promise and engage, to give full and perfect protection to the persons and property of the citizens of each other, of all classes and occupations, who may be dwelling or transient in the territories, subject to their respective jurisdiction: they shall have free and open access to the tribunals of justice for their judicial recourse, on the same terms as are usual and customary with the natives or citizens of the country in which they may be, and they shall be at liberty

estado de proseguir su viaje sin obstáculo ó molestia.

ARTICULO XVIII.

Todos los buques, mercaderias, y efectos pertenecientes á Ciudadanos de una de las Altas Partes Contratantes que sean apresados por piratas, bien en Alta Mar ó dentro de los limites de su jurisdiccion, y que fuesen llevados ó encontrados en los rios, radas ó bahias, puertos ó dominios de la otra, serán entregados á los dueños ó á sus ajentes, con tal que prueben en propia y debida forma sus derechos ante los Tribunales competentes: debiendo entenderse que el reclamo ha de hacerse dentro del término de dos años por las mismas partes, sus ajentes ó los de sus respectivos Gobiernos

ARTICULO XIX.

Las Altas Partes Contratantes ofrecen y se comprometen á dar la mas cumplida proteccion á las personas y propiedades de los ciudadanos de una ú otra, de todas clases y ocupaciónes, que puedan estar en los territorios sujetos á su respectiva jurisdiccion, ya sean transeuntes ó domiciliados; dandoles libre acceso ante los Tribunales de justicia para sus recursos judiciales, en los mismos términos que son de uso y costumbre con los naturales ó ciudadanos del pais en donde se

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to employ in all causes, the advocates, attornies, notaries or agents of whatever description, whom they may think proper.

The said citizens shall not be liable to imprisonment, without formal commitment under a warrant signed by a legal authority, except in cases *flagrantis delicti*, and they shall, in all cases, be brought before a magistrate, or other legal authority, for examination, within twenty four hours after arrest, and, if not so examined, the accused shall, forthwith, be discharged from custody. Said citizens, when detained in prison shall be treated, during their imprisonment, with humanity and no unnecessary severity shall be exercised towards them.

hallen; para cuyo efecto podrán emplear en defensa de sus derechos los Abogados, procuradores, escribanos y ajentes de cualquier clase que crean conveniente.

Dichos ciudadanos no podrán ser presos sin que preceda un auto de prision y en vista de una órden firmada por una autoridad legal, escepto en los casos de delito infraganti, y siempre se les hará comparecer ante un juez ú otra autoridad legal para tomarle declaraciones dentro del término de veinticuatro horas despues del arresto, y sí en ese tiempo no se le han tomado declaraciónes, el acusado será puerto inmediatamente en libertad. Cuando se detenga á los dichos Ciudadanos se les tratará con humanidad durante su prision y no se empleará con ellos ningun rigor innecesario.

Article XX.

It is likewise agreed, that perfect and entire liberty of conscience shall be enjoyed by the citizens of both the contracting parties, in the countries subject to the jurisdiction of the one or the other, without their being liable to be disturbed or molested on account of their religious belief, so long as they respect the laws and established usages of the country.

Moreover, the bodies of the citizens, of one of the contracting parties, who may die in the territories of the other, shall be buried

Articulo XX.

Se conviene así mismo en que los ciudadanos de las dos Partes Contratantes, disfrutarán entera y perfecta libertad de conciencia en los paises sometidos á la jurisdiccion de la una y de la otra, sin estar sujetos á ser perturbados ó molestados á causa de su creencia relijiosa, en tanto que respeten las leyes y usos establecidos del pais. Además los cuerpos de los ciudadanos de una de las partes contratantes que murieren en los territorios de la otra, serán enterrados en los lugares de costumbre, ó en otros

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in the usual burying grounds, or in other decent and suitable places, and shall be protected from violation or disturbance.

ARTICLE XXI.

The citizens of the United States of America and of the Republic of Peru may sail with their vessels, with entire freedom and security from any port, to the ports or places of those who now are or hereafter shall be enemies of either of the contracting parties, whoever may be the owners of the merchandise laden in the said vessels. The same citizens shall also be allowed to sail with their vessels, and to carry and traffic with their merchandise, from the ports and places of the enemies of both parties, or of one of them, without any hindrance, not only to neutral ports and places, but also from one port belonging to an enemy to another enemy's port, whether they be under the jurisdiction of one power or under several. And it is agreed, that free ships shall give freedom to goods, and that every thing shall be deemed free, which shall be found on board the vessels belonging to the citizens of either of the contracting parties, although the whole lading, or a part thereof, should belong to the enemies of either; articles, contraband of war being always excepted. The same liberty shall be extended to persons, who

lugares propios y decentes, y serán protejidos de toda violacion ó falta de respeto.

ARTICULO XXI.

Los ciudadanos de la República del Perú y los de los Estados Unidos de América, podran navegar con sus buques en perfecta libertad y seguridad, sin que se haga distincion de quienes sean los dueños de las mercaderias que tengan á su bordo, de cualquier puerto ó lugar á los puertos y lugares de aquellos que en la actualidad son ó fueren en lo sucesivo enemigos de una de las partes contratantes. Será asímismo licito á los predichos ciudadanos navegar con los buques y mercaderias arriba mencionadas, y comerciar con la misma libertad y seguridad, de los lugares, puertos y bahias de aquellos que son enemigos de una de las dos partes, ó de ambas, sin ninguna oposicion ó impedimento, no solo directamente de los lugares del enemigo ya nombrado, á los lugares neutrales, sino tambien de un lugar perteneciente á un enemigo á otro puerto tambien del enemigo, bien sea que estén bajo la jurisdiccion de una misma potencia, ó bajo la de varias. Y queda convenido que los buques libres harán libres las mercaderias y que se reputará libre todo lo que se encuentre á bordo de los buques pertenecientes á los ciudadanos de cualquiera de las partes

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may be on board free ships, so that said persons cannot be taken out of them, even if they may be enemies of both parties, or of one of them, unless they are officers or soldiers in the actual service of the enemy. It is agreed, that the stipulations in this article, declaring that the flag shall cover the property shall be understood as applying to those nations only who recognize this principle; but if either of the contracting parties shall be at war with a third, and the other shall remain neutral, the flag of the neutral shall cover the property of enemies whose governments acknowledge this principle and not that of others.

contratantes, aunque todo el Cargamento, ó una parte de él pertenezca á enemigos de la otra, exceptuandose siempre los efectos de contrabando de guerra. La misma libertad se estenderá á las personas que esten á bordo de un buque libre, de suerte que dichas personas no podrán ser arrestadas ni sacadas de esos buques aunque sean enemigos de una de las partes ó de ambas á menos que sean oficiales ó soldados y en actual servicio del Enemigo. Y se conviene, que las estipulaciones contenidas en este articulo, declarando que el pabellon cubrirá la propiedad son aplicables á aquellas potencias solamente que reconocen este principio; pero sí alguna de las partes Contratantes estuviere en guerra con una tercera, y la otra fuere neutral, el pabellon del neutral cubrirá la propiedad de aquellos enemigos cuyos Gobiernos reconocen este principio y no la de los otros.

Article XXII.

When the neutral flag of one of the contracting parties shall protect the property of the enemies of the other, in virtue of the preceding article, neutral property found on board enemies' vessels shall likewise be considered as enemies' property, and shall be subject to detention and confiscation, unless it shall have been put on board before the declaration of war, or even afterwards, if it were done without knowledge

Articulo XXII.

En los casos en que el pabellon neutral de una de las partes contratantes proteja la propiedad de los enemigos de la otra, en virtud de la precedente estipulacion, la propiedad neutral que se hallare á bordo de los buques del enemigo se considerará del mismo modo como propiedad enemiga, y estará sujeta á detencion y confiscacion á menos que hubiére sido puesta á bordo de tales buques ántes de la declaracion de

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of such declaration; but the contracting parties agree that ignorance cannot be alleged after the lapse of six months from the declaration of war. On the contrary, in those cases where the flag of the neutral does not protect enemies' property which may be found on board, the goods or merchandise of the neutral embarked in enemies' vessels shall be free.

ARTICLE XXIII.

The liberty of commerce and navigation, stipulated for in the preceding Articles, shall extend to all kinds of merchandise, except the articles called contraband of War, under which name shall be comprehended—1st Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fusees, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberds, grenades, bombs, powder, matches, balls and every thing belonging to the use of these arms.

2nd Bucklers, helmets, breastplates, coats of mail, accoutrements and clothes made up in military form and for military use.

3d Cavalry belts and horses, with their harness.

4th And generally all offensive or defensive arms made of iron, steel, brass, copper, or of any other material, prepared and

la guerra, ó aun despues sí se hubiere hecho sin conocimiento de la tal declaracion; pero las partes contratantes convienen que no podra alegarse ignorancia seis meses despues de la declaracion de la guerra. Por el contrario en aquellos casos en que el pabellon del neutral no proteje la propiedad enemiga que se encuentre á bordo, los efectos y mercaderias del neutral embarcadas en tales buques enemigos serán libres.

ARTICULO XXIII.

La libertad de Comercio y navegacion estipulada en los articulos anteriores se estenderá á toda especie de mercaderias, exceptuandose únicamente aquellos articulos que se llaman contrabando de guerra, bajo cuya denominacion se comprenden: 1º canoñes, morteros, obuses, pedreros, trabucos, mosquetes, fusiles, rifles, carabinas, pistolas, picas, espadas, sables, lanzas, chuzos, alabardas, granadas y bombas, polvora, mechas, balas con las demás cosas correspondientes al uso de estas armas: 2º escudos, casquetes, corazas, cotas de malla, fornituras y bestidos hechos en forma y para uso militar: 3º bandoleras y caballos junto con sus arneses: 4º y generalmente toda especie de armas ofensivas y defensivas hechas de hierro, acero, bronce, cobre y otros materiales manufacturadas,

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formed to make war by land or at sea.

ARTICLE XXIV.

All other merchandise and things not comprehended in the articles of contraband, explicitly enumerated and classified as above, shall be held and considered as free, and subjects of free and lawful commerce, so that they may be carried and transported in the freest manner by both the contracting parties, even to places belonging to an enemy, excepting only those places, which are at that time besieged or blockaded; and to avoid all doubt in this particular, it is declared, that those places only shall be considered as besieged or blockaded, which are actually invested or attacked by a force capable of preventing the entry of the neutral.

ARTICLE XXV.

The articles of contraband, or those before enumerated and classified, which may be found in a vessel bound for an enemy's port, shall be subject to detention and confiscation; but the rest of the cargo and the ship shall be left free, that the owners may dispose of them, as they see proper. No vessel of either of the contracting parties shall be detained on the high seas, on account of having on board articles of contraband, whenever the master, captain, or

preparadas y formadas expresamente para hacer la guerra por mar ó por tierra.

ARTICULO XXIV.

Cualesquiera otras mercaderias y cosas no comprendidas en los articulos de contrabando explicitamente enumerados y clasificados arriba, se tendrán y considerarán libres y materia de libre y lejitimo comercio; de manera que puedan ser llevadas y trasportadas en el modo mas libre por las dos partes contratantes, aun á los lugares pertenecientes á un enemigo, exceptuando unicamente aquellos lugares que estén en aquel tiempo sitiados ó bloqueados; y para evitar toda duda sobre el particular se declara que únicamente se considerarán sitiados ó bloqueados aquellos lugares que se hallen á la sazon atacados por una fuerza capaz de impedir la entrada del Neutral.

ARTICULO XXV

Los articulos de contrabando, ó los ya enumerados y clasificados que se encuentren en un buque destinado á un puerto enemigo, estarán sujetos á detencion y confiscacion; pero el resto del cargamento y el buque se dejarán libres para que los dueños puedan disponer de ellos segun estimen conveniente. Ningun buque de ninguna de las partes Contratantes será detenido en alta mar por tener á bordo articulos de contrabando, siempre que el maestre,

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supercargo of said vessel will deliver up the articles of contraband to the captor; unless indeed, the quantity of such articles be so great, or of so large bulk, that they cannot be received on board the capturing vessel without great inconvenience; but in this and all other cases of just detention, the vessel detained shall be sent to the nearest convenient and safe port for trial and judgment according to law.

ARTICLE XXVI.

And whereas it frequently happens that vessels sail for a port or place belonging to an enemy, without knowing that the same is besieged, blockaded, or invested, it is agreed, that every vessel so circumstanced may be turned away from such port or place, but shall not be detained; nor shall any part of her cargo, if not contraband, be confiscated, unless, after having been warned of such blockade or investment by the commanding officer of a vessel, forming part of the blockading forces, she again attempt to enter, but she shall be permitted to go to any other port or place, the master or supercargo may think proper. Nor shall any vessel of either party, that may have entered into such port or place before the same was actually besieged, blockaded, or invested by the other be restrained from leaving it with her cargo; nor if found therein before or after the

capitan ó sobre-cargo del susodicho buque entregue los articulos de contrabando al apresador; á menos que sea tan grande y de tanto volumen la cantidad de los tales articulos que no puedan recibirse á bordo del buque apresador sin gran inconveniente; pero en este y en todos los otros casos de justa detencion, el buque detenido será enviado al puerto mas inmediato, cómodo y seguro, para ser juzgado con arreglo á las leyes.

ARTICULO XXVI.

Y como frecuentemente sucede que navegan buques para un puerto ó lugar perteneciente á un enemigo sin saber que él mismo está sitiado, bloqueado ó atacado, se conviene que todo buque que se halle en este caso, sea rechazado del tal puerto ó lugar, pero no detenido, ni confiscada, ninguna parte de su cargamento que no sea contrabando, á menos que despues de notificarsele el bloqueo ó ataque por el oficial que mande un buque que forme parte de las fuerzas bloqueadoras intentase de nuevo entrar; pero se le permitirá ir á cualquiera otro puerto ó lugar que juzgue oportuno el maestre ó sobrecargo. Y á ningun buque de una ú otra parte que hubiere entrado en un puerto ó lugar ántes de que el mismo, fuese sitiado, bloqueado ó atacado por la otra, se le impedirá que salga con su cargamento; ni si se encontrase allí ántes ó despues de la reduccion y

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reduction and surrender, shall such vessel or her cargo be liable to seizure, confiscation, or any demand on the score of redemption or restitution; but the owners thereof shall remain in the undisturbed possession of their property. And if any vessel, having thus entered the port before the blockade took place, shall take on board a cargo, after the blockade be established, and attempt to depart, she may be warned by the blockading forces, to return to the blockaded port, and discharge the said cargo; and if, after receiving such warning, the vessel shall persist in going out with the cargo, she shall be liable to the same consequences, as in the case of a vessel attempting to enter a blockaded port after having been warned off by the blockading forces.

ARTICLE XXVII.

To prevent disorder and irregularity in visiting and examining the vessels and cargoes of both the contracting parties, on the high seas, they have agreed, mutually, that whenever a vessel of war, public or private, shall meet with a neutral of the other party, the former shall remain at the greatest distance compatible with the possibility and safety of making the visit under the circumstances of wind and sea and the degree of suspicion attending the vessel to be visited and shall send one of her small boats with

entrega estará sujeto el tal buque ó su cargamento, á apresamiento, confiscacion ó demanda alguna por causa de redencion ó restitucion, sino que se dejará á sus dueños en tranquila posesion de su propiedad. Y sí algun buque que hubiere entrado en el puerto ántes de tener lugar el bloqueo, tomase carga á bordo despues de establecido el bloqueo, é intentase salir, se le podrá intimar por las fuerzas bloqueadoras que vuelva al puerto bloqueado y descargue su cargamento; y sí despues de recibir la dicha intimacion insistiere el buque en salir con el cargamento, estará sujeto á las mismas consecuencias á que lo estaria una embarcacion que intentase entrar en un puerto bloqueado, despues de ser intimada por las fuerzas bloqueadoras.

ARTICULO XXVII.

Para impedir todo género de desorden é irregularidad en la visita y examen de los buques y cargamentos de las dos partes contratantes en alta mar, han convenido mutuamente, que cuando un buque de guerra, público ó particular encontrare á un neutral de la otra parte contratante, el primero permanecerá á la mayor distancia que sea compatible con la posibilidad y la seguridad de hacer la visita, atendidas las circunstancias del viento y de la mar, y el grado de sospecha que inspire el bajel que ha de ser visitado, y enviará

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no more men, than may be necessary to execute the said examination of the papers concerning the ownership and cargo of the vessel, without causing the least extortion, violence, or ill-treatment in respect of which, the commanders of said armed vessels, shall be responsible with their persons and property; for which purpose, the commanders of said private armed vessels shall, before receiving their commissions, give sufficient security, to answer for all the injuries and damages they may commit. And it is expressly agreed that the neutral party shall in no case be required to go on board of the examining vessel for the purpose of exhibiting the ship's papers; nor for any other purpose whatever.

uno de sus botes pequeños sin mas jente que la necesaria para tripularlo, con el objeto de ejecutar el predicho examen de los papeles relativos á la propiedad y cargamento del buque, sin causar la menor estorcion, violencia ó maltratamiento; respecto á lo cual los Comandantes de los susodichos buques armados, serán responsables con sus personas y propiedades; para cuyo fin los Comandantes de los predichos buques particulares armados, ántes de recibir sus comisiones, darán la suficiente seguridad para responder por todos los daños y perjuicios que cometieren. Y se conviene expresamente que en ningun caso se requerirá que la parte neutral vaya á bordo del buque que hace la visita, ni para exhivir sus papeles ni para ningun otro objeto.

ARTICLE XXVIII.

Both contracting Parties likewise agree, that when one of them shall be engaged in War, the vessels of the other must be furnished with sea letters, patents or passports, in which shall be expressed the name, burthen of the vessel and the name and place of residence of the owner, and master, or Captain, thereof, in order that it may appear that the vessel really and truly belongs to citizens of the said other party. It is also agreed, that such vessels being laden, besides the said sea letters, patents, or passports, shall be pro-

ARTICULO XXVIII.

Ambas partes contratantes convienen que en el caso que una de ellas estuviere empeñada en guerra, los buques de la otra deben estar provistas de letras de mar, patentes ó pasaportes, en que se expresen el nombre y tamaño del buque, como tambien el nombre y el lugar de la residencia de su dueño, maestre ó Capitan, á fin de que aparezca por ellos que el susodicho buque pertenece real y verdaderamente á ciudadanos de la dicha otra parte. Y han convenido así mismo en que los dichos buques,

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vided with Manifests or certificates, containing the particulars of the cargo and the place where it was taken on board, so that it may be known whether any part of the same consists of contraband or prohibited articles.—which certificates shall be made out, in the accustomed form, by the authorities of the port whence the vessel sailed: without which requisites the vessel may be detained, to be adjudged by the competent tribunales and may be declared good and legal prize, unless it shall be proved, that the said defect or omission was owing to accident, or unless it shall be satisfied, or supplied, by testimony equivalent in the opinion of the said tribunals, for which purpose there shall be allowed a reasonable length of time to procure and present it.

estando cargados, llevarán además de las mencionadas letras de mar, patentes ó pasaportes, manifiestos ó certificados que contengan los diferentes pormenores del cargamento, y el lugar donde fué embarcado; de manera que se sepa sí hay á su bordo efectos prohibidos ó de contrabando, dichos certificados serán expedidos por las autoridades del lugar de donde salió el buque en la forma acostumbrada, sin cuyos requisitos, el susodicho buque puede ser detenido para ser adjudicado por los Tribunales competentes y puede ser declarado presa legal, á menos que se pruebe que el precitado defecto proviene de accidente, ó sea satisfecho ó suplido por un testimonio del todo equivalente, en la opinion de los susodichos Tribunales; á cuyo fin se concederá un término suficiente para proporcionarselo.

ARTICLE XXIX.

The preceding stipulations relative to the visit and examination of vessels, shall apply only to those which sail without convoy; for when said vessels shall be under convoy, the verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag they carry, and when they are bound to an enemy's port, that they have no contraband

ARTICULO XXIX.

Las estipulaciones arriba expresadas, relativas á la visita y examen de los buques, se aplicarán solamente á aquellos que navegan sin convoy; y cuando los dichos buques fueren convoyados, la declaracion verbal del Comandante del convoy, bajo su palabra de honor, de que los bajeles que estan bajo su proteccion pertenecen á la nacion cuya bandera tremola él, y cuando su destino es

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goods on board, shall be sufficient.

á un puerto enemigo, de que no tienen á bordo efectos de contrabando, será considerada suficiente.

ARTICLE XXX.

It is further agreed, that in all prize cases the courts specially established for such causes, in the country to which the prizes may be conducted, shall alone take cognizance of them. And whenever such courts of either party shall pronounce judgment against any vessel, merchandise, or property, claimed by the citizens of the other party, the sentence or decree shall set forth the reasons or motives on which the same shall have been founded, and an authenticated copy of the sentence, or decree and of all the proceedings, connected with the case shall, if demanded, be delivered to the commander, or agent, of the said vessel, merchandise or property, without any excuse or delay, upon payment of the established legal fees for the same.

ARTICULO XXX.

Se conviene así mismo que, en todo caso de presas los Tribunales establecidos para tales causas en el pais á que puedan ser conducidas las presas, serán los únicos que tomen conocimiento de ellas. Y siempre que semejantes Tribunales de una ú otra parte pronunciaren sentencia contra algun buque, efectos ó propiedad reclamados por ciudadanos de la otra parte, la sentencia ó descision mencionará las razones ó motivos en que se ha fundado, y se entregará al Comandante ó Ajente del dicho buque ó propiedad sin excusa ó demora alguna, sí él lo pidiere, una copia autentica de la sentencia ó decision, y de todos los procedimientos del caso, con tal que pague por ello los derechos ó gastos legales.

ARTICLE XXXI.

Whenever one of the contracting parties shall be engaged in war with another Nation, no citizen of the other contracting party shall accept a commission or letter of marque, for the purpose of assisting or co-operating hostilely with the said enemy against the said party so at war, under pain of being treated as a pirate.

ARTICULO XXXI.

Siempre que una de las partes contratantes estuviere empeñada en guerra con otra nacion, ningun ciudadano de la otra parte contratante aceptará comision ó letra de marca con el objeto de ayudar ó cooperar hostilmente con el susodicho enemigo contra la predicha parte que está en guerra, so pena de ser tratado como pirata.

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ARTICLE XXXII.

If, which is not to be expected, a rupture should at any time take place between the two contracting nations, and they should engage in war with each other, they have agreed, now for then,that the merchants, traders, and other citizens of all occupations of either of the two parties, residing in the cities ports and dominions of the other, shall have the privilege of remaining and continuing their trade and business therein, and shall be respected and maintained in the full and undisturbed enjoyment of their personal liberty and property, so long as they conduct themselves peaceably and properly and commit no offence against the laws. And, in case their acts should render them justly suspected, and having thus forfeited this privilege, the respective governments should think proper to order them to leave the country, the term of twelve months, from the publication or intimation of the order therefor, shall be allowed them, in which to arrange and settle their affairs and remove with their families, effects and property; to which end, the necessary safe conduct shall be given to them, which shall serve as a sufficient protection, until they arrive at the designated port and there embark; but this favor shall not be extended to those, who shall act contrary to the established laws. It is, nevertheless,

ARTICULO XXXII.

Si, lo que no es de esperar, llegase á haber en cualquier tiempo un rompimiento entre las dos naciones contratantes y se empeñaren en guerra una con otra, han convenido ahora para entonces, que los comerciantes, traficantes y otros ciudadanos de todas profesiones, de cualquiera de las partes que residen en las Ciudades, puertos y dominios de la otra, tendrán el privilejio de permanecer alli y de continuar su comércio y negócios y serán respetados y mantenidos en el pleno y tranquilo goce de su libertad personal y de su propiedad, en tanto que se conduzcan pacificamente de un modo arreglado,y no cometan ofensa alguna contra las leyes. Y en caso de que su conducta los hiciere justamente sospechosos y habiendo perdido así este privilejio, los respectivos Gobiernos juzgaren oportuno mandarlos salir del pais, se les concederá el término de doce meses, contados desde la publicacion ó intimacion de la órden, para que en él puedan arreglar y ordenar sus negócios y retirarse con sus familias, efectos y propiedades: á cuyo fin, se les dará el necesario salvo-conducto, que sirva de suficiente proteccion, hasta que lleguen al puerto designado, y en él se embarquen. Pero este favor no se estenderá á aquellos que obraren de un modo contrario á las leyes establecidas.

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understood, that the respective governments may order the persons so suspected to remove, forthwith, to such places in the interior as may be designated.

ARTICLE XXXIII.

In the event of a war or of any interruption of friendly intercourse between the High Contracting Parties, the money, private debts, shares in the public funds, or in the public or private banks, or any other property whatever, belonging to the citizens of the one party in the territories of the other, shall in no case be sequestrated, or confiscated.

ARTICLE XXXIV.

The High Contracting Parties desiring to avoid all inequality in their public communications and official intercourse, agree to grant to their Envoys, Ministers, Chargés d'Affaires and other Diplomatic Agents, the same favors, privileges, immunities and exemptions, that those of the most favored nations do or shall enjoy: it being understood that the favors, privileges, immunities and exemptions granted by the one party, to the Envoys, Ministers, Chargés d'Affaires or other Diplomatic Agents of the other party, or to those of any other Nation, shall be, reciprocally, granted and extended to those of both the

Debe no obstante entenderse, que á las personas así sospechosas, pueden los Gobiernos respectivos mandarlas retirar inmediatamente á lo interior, á aquellos lugares que tengan por conveniente designar.

ARTICULO XXXIII.

En el caso de una guerra ó de una interrupcion de la cordial inteligencia de las dos Altas Partes Contratantes, la propiedad en dinero, deudas entre particulares, acciones en los fondos públicos, ó en los bancos públicos ó privados, ó cualquiera otra propiedad perteneciente á los ciudadanos de una de las partes en el territorio de la otra, no podrá ser secuestrada ó confiscada en ningun caso.

ARTICULO XXXIV.

Deseando las dos partes contratantes evitar toda desigualdad con relacion á sus comunicaciones públicas, y á su correspondencia oficial, han convenido y convienen, en conceder á sus Enviados, Ministros, Encargados de Negócios y otros Ajentes públicos, los mismos favores, inmunidades y excenciones que hoi disfrutan ó en adelante disfrutaren los de la nacion mas favorecida; entendiendose, que cualesquiera favores, inmunidades ó privilejios que la República del Perú y los Estados Unidos de América tuvieren por conveniente conceder á los Enviados, Ministros, Encargados de Négocios y

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High Contracting Parties respectively.

ARTICLE XXXV.

To protect more effectually the Commerce and Navigation of their respective citizens, the United States of America and the Republic of Peru agree to admit and receive, mutually, Consuls and Vice Consuls, in all their ports open to foreign Commerce, who shall enjoy, within their respective Consular districts, all the rights, prerogatives, and immunities of the Consuls and Vice Consuls of the most favored Nation, but, to enjoy the rights, prerogatives and immunities which belong to them in virtue of their public character, the Consuls and Vice Consuls shall, before exercising their official functions, exhibit, to the government to which they are accredited, their Commissions or patents in due form; in order to receive their *exequatur*, after receiving which, they shall be acknowledged, in their official characters, by the authorities, magistrates and inhabitants of the district in which they reside. The High Contracting Parties, nevertheless, remain at liberty to except those ports and places, where the admission and residence of Consuls or Vice Consuls may not seem convenient,

Ajentes diplomaticos de cualquiera otra potencia, serán por el mismo acto estendidos y concedidos á los de las partes contratantes respectivamente.

ARTICULO XXXV.

A fin de hacer mas efectiva la proteccion que la República del Perú y los Estados Unidos de America concedieren en lo futuro al comercio y navegacion de sus respectivos ciudadanos, la República del Perú y los Estados Unidos de América convienen en recibir y admitir Consules y Vice-Consules en todos los puertos abiertos al comercio extranjero; los cuales disfrutarán dentro de sus respectivos distritos consulares, todos los derechos, prerogativas é inmunidades de los Consules y Vice-Consules de la nacion mas favorecida. Pero para que los Consules y Vice-Consules de las dos partes contratantes puedan disfrutar de los derechos, prerogativas é inmunidades que les pertenecen por su caracter público, presentarán ántes de ejercer sus funciones, su nombramiento ó patente, en debida forma al Gobierno cerca del cual sean acreditados, á fin de obtener el *exequatur;* y recibido este serán tenidos y considerados como tales Consules ó Vice-Consules, por todas las autoridades, majistrados y habitantes del distrito consular donde residan. Queda sin embargo cada una de las partes contratantes en libertad de esceptuar aquellos

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provided that the refusal to admit them shall likewise extend to those of all nations.

puertos y lugares en donde no se crea conveniente la admision y residencia de tales funcionarios, bien entendido que en tal caso la esclusion ó negativa á admitirlos deberá ser comun ó jeneral para todas las naciones.

ARTICLE XXXVI

The Consuls, Vice Consuls, their officers and persons employed in their Consulates, shall be exempt from all public service and from all kinds of taxes, imposts and contributions, except those which they shall lawfully be held to pay on account of their property or commerce and to which the citizens and other inhabitants of the country in which they reside are subject, they being in other respects subject to the laws of the respective countries. The archives and papers of the Consulates shall be inviolably respected and no person, magistrate, or other public authority, shall, under any pretext, interfere with or seize them.

ARTICULO XXXVI.

Los Consules, Vice-Consules, oficiales, y personas empleadas en sus Consulados estarán esentos de todo servicio público, y tambien de todo género de Contribuciones, pechos é impuestos, escepto aquellos que estuvieren obligados á pagar á causa de su comercio ó de sus propiedades, y á los que están sujetos los ciudadanos y otros habitantes del pais en que residen, estando ellos por lo demás sometidos á las leyes de los respectivos paises. Los archivos y papeles de los Consulados, serán inviolablemente respetados, y bajo de ningun pretesto se apoderará de ellos ó intervendrá en manera alguna con ellos, ningun majistrado, ni cualquiera otra persona.

ARTICLE XXXVII.

The Consuls and Vice Consuls shall have power to require the assistance of the public authorities of the country in which they reside, for the arrest, detention and custody of deserters from the vessels of War or merchant vessels of their nation; and where the deserters claimed shall belong to a merchant vessel, the Consuls or

ARTICULO XXXVII.

Los Cónsules y Vice-Consules, tendrán la facultad de requerir el aucilio de las autoridades del pais en que residan para el arresto, detencion y custodia de los desertores de los buques de guerra y mercantes de su nacion; y cuando los desertores reclamados pertenezcan á un buque mercante, los Consules y Vice-Consules podrán diri-

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Vice Consuls must address themselves to the competent authority and demand the deserters in writing, proving by the ship's roll, or other public document, that the individuals claimed are a part of the crew of the vessel from which it is alleged that they have deserted, but should the individuals claimed form a part of the crew of a vessel of War, the word of honor of a commissioned officer, attached to the said vessel, shall be sufficient to identify the deserters; and when the demand of the Consuls or Vice Consuls shall, in either case, be so proved, the delivery of the deserters shall not be refused. The said deserters when arrested shall be delivered to the Consuls or Vice Consuls, or at the request of these, shall be put in the public prisons and maintained at the expense of those who reclaim them, to be delivered to the vessels to which they belong or sent to others of the same nation; but if the said deserters should not be so delivered or sent within the term of two months, to be counted from the day of their arrest, they shall be set at liberty and shall not be again apprehended for the same cause. The High Contracting Parties agree, that it shall not be lawful for any public authority or other person, within their respective dominions to harbor or protect such deserters.

jirse ellos mismos á las autoridades competentes y pedir por escrito los susodichos desertores, manifestando el rol del buque ú otros documentos públicos para probar con ellos que los hombres pedidos forman parte de la tripulacion del buque de donde se alega que desertaron: pero si los individuos reclamados perteneciesen á la tripulacion de un buque de guerra, bastará la palabra de honor del Oficial con despacho [1] de dicho buque para identificar á los desertores y en cualquier caso que se pruebe por estos medios la reclamacion de los Consules ó Vice-Consules, no se rehusará la entrega de los desertores. Una vez arrestados los tales desertores, se tendrán á disposicion de los susodichos Consules, y pueden ponerse en las prisiones públicas á peticion y costo de aquellos que los reclaman para ser enviados á los buques á que pertenecem ó á otros de la misma nacion; pero si no fuesen así enviados dentro de los dos meses que deberán contarse desde el dia de su arresto, serán puestos en libertad y no volverán á ser arrestados por la misma causa. Las Altas Partes Contratantes convienen en que no podrá legalmente ninguna Autoridad pública ni otra persona cualquiera amparar ó potejer á tales desertores dentro de sus respectivos dominios.

[1] Regarding the words "Oficial con despacho", see the editorial notes.

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ARTICLE XXXVIII.

For the purpose of more effectually protecting their commerce and navigation, the two contracting parties do hereby agree to form, as soon hereafter as may be mutually convenient, a consular convention, which shall declare specially the powers and immunities of the Consuls and Vice Consuls of the respective parties.

ARTICULO XXXVIII.

Con el objeto de protejer de un modo mas efectivo su comercio y navegacion, las dos partes contratantes convienen por la presente en formar, mas adelante, tan pronto como á ambas les convenga, una convencion consular en que se declaren especialmente las facultades é inmunidades de los Consules y Vice-Consules de las partes respectivas.

ARTICLE XXXIX.

Until the Conclusion of a Consular Convention, the High Contracting Parties agree that, in the absence of the legal heirs or representatives, the Consuls or Vice Consuls of either party shall be, *ex officio*, the Executors or Administrators of the citizens of their nation, who may die within their Consular jurisdictions, and of their countrymen dying at sea, whose property may be brought within their district. The said Consuls or Vice Consuls shall call in a Justice of the peace, or other local authority, to assist in taking an inventory of the effects and property left by the deceased, after which the said effects shall remain in the hands of the said Consuls, or Vice Consuls, who shall be authorised to sell, immediately, such of the effects, or property, as may be of a perishable nature, and to dispose of the remainder, according to the instructions of their respective Govern-

ARTICULO XXXIX.

Hasta que se concluya una convencion Consular, queda estipulado entre las Altas Partes Contratantes: que en ausencia de los herederos legales ó sus representantes, los Consules ó Vice-Consules de cualquiera de las partes, serán „*ex officio*" los albaceas ó administradores de los ciudadanos de su nacion que mueran dentro de sus distritos Consulares; y de aquellos que mueran en la mar, y cuya propiedad pueda ser llevada á algun Puerto ó lugar dentro de los mismos distritos. Los dichos Consules ó Vice-Consules podrán presentarse á un Juez de Paz, ó á cualquier otra autoridad local, y pedir que se haga el inventario de los efectos y propiedades que ha dejado el difunto, y despues de hecho, esos efectos quedarán en poder del Cónsul ó Vice-Consul, el que estará autorizado para vender inmediatamente áquellos efectos ó propiedades que puedan sufrir deterioro, y para disponer del

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ments. And where the deceased has been engaged in Commerce, or other business, the Consuls or Vice Consuls shall hold the effects and property, so remaining, until the expiration of twelve calendar months; during which time the creditors, if any, of the deceased, shall have the right to present their claims or demands against the said effects and property, and all questions, arising out of such claims or demands, shall be decided by the laws of the country wherein the said citizens may have died. It is understood, nevertheless, that if no claim or demand shall have been made against the effects and property of an individual so deceased, the Consuls or Vice Consuls at the expiration of the twelve calendar months, may close the estate and dispose of the effects and property in accordance with the instructions from their own Governments.

ARTICLE XL.

The United States of America and the Republic of Peru, desiring to make as durable as circumstances will permit the relations established between the two parties, in virtue of this Treaty of Friendship, Commerce and Navigation, declare solemnly, and agree as follows:

1st The present Treaty shall remain in force for the term of ten years, from the day of the exchange of the ratifications thereof,

resto segun las instrucciones de sus respectivos Gobiernos. Y cuando el difunto haya estado consagrado al comercio ó á otros negócios, los Consules ó Vice-Consules guardarán los efectos y propiedades que hayan quedado durante el plazo de doce meses, á fin de que si hay acreedores contra el difunto puedan presentar sus reclamaciones ó demandas contra los dichos bienes, y todas las cuestiones que se susciten por tales reclamaciones ó demandas se descidirán segun las leyes del pais en donde los dichos ciudadanos hayan fallecido. Se entiende, sin embargo, que sí ninguna reclamacion ó demanda se ha hecho contra los bienes de un individuo que haya fallecido de esa manera, los Consules ó Vice-Consules, al fin del plazo de los doce meses podrán concluir la testamentaria y disponer de los bienes conforme á los instrucciones de sus propios Gobiernos.

ARTICULO XL.

La República del Perú y los Estados Unidos de América deseando hacer tan durables como las circunstancias lo permitan las relaciones establecidas entre ambas Partes, en virtud de este Tratado de Amistad, Comercio y Navegacion: declaran solemnemente, y convienen en lo que sigue:

1º El presente Tratado durará por el término de diez años, contados desde el dia del canje de las ratificaciones, y mas hasta el fin de

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and further, until the end of one year after either of the High Contracting Parties shall have given notice to the other of its intention to terminate the same, each of them reserving to itself the right of giving such notice, to the other, at the end of the said term of ten years. And it is hereby agreed between the parties, that, on the expiration of one year after such notice shall have been received by either of them, from the other party as above mentioned, this Treaty shall altogether cease and determine.

2dly If any citizen or citizens, of either party, shall infringe any of the Articles of the Treaty, such citizen or citizens shall be held personally responsible therefor, and the harmony and good understanding between the two nations, shall not be interrupted thereby,—each party engaging in no way to protect the offender or offenders, or to sanction such violation under pain of rendering itself liable for the consequences thereof.

3dly Should, unfortunately, any of the provisions contained in the present Treaty be violated or infringed in any other manner whatever, it is expressly stipulated and agreed that neither of the contracting parties shall order or authorise any act of reprisals, nor declare or make war against the other, on complaint of injuries or damages resulting there-

un año despues que cualquiera de las dos Partes Contratantes haya notificado á la otra su intencion de cancelarlo, reservandose cada una el derecho de hacer esa notificacion á la otra, al fin de dicho plazo de diez años. Y se conviene además entre las partes que á la espiracion de un año despues que se haya recibido esa notificacion por una de ellas, hecha por la otra parte como se ha mencionado, este Tratado concluirá y terminará enteramente.

2º Sí cualquier ciudadano ó cualesquier ciudadanos de una ú otra parte, quebrantasen cualquier articulo de este Tratado, dichos ciudadano ó ciudadanos serán responsables personalmente, y la armonia y buena intelijencia entre las dos Naciones no se interrumpirán por ese motivo; y cada parte se compromete á no protejer de ninguna manera al infractor ó infractores, ó á sancionar tal violacion, so pena de hacerse la misma responsable por las consecuencias de ella.

3º Sí desgraciadamente las estipulaciones de este Tratado fuesen violadas de otra manera, se conviene expresamente en que ninguna de las Partes Contratantes ordenará ó autorizará ningun acto de represalia, ní declarará la guerra á la otra por quejas de agravios ó perjuicios que de allí resulten, hasta que la parte que se considere agraviada haya pre-

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from, until the party considering itself aggrieved, shall first have presented to the other a statement or representation of such injuries or damages, verified by competent proofs and demanded redress and satisfaction, and the same shall have been either refused or unreasonably delayed.

4th]y Nothing contained in this Treaty shall, however be construed to operate contrary to former and existing public treaties with other Nations or Sovereigns.

The present Treaty of Friendship, Commerce and Navigation shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by the President of the Republic of Peru, with the authorisation of the Congress thereof, and the ratifications shall be exchanged, at Washington, within eighteen months from the date of the signature hereof, or sooner if possible.

In faith whereof, we the Plenipotentiaries of the United States of America and of the Republic of Peru have signed and sealed these presents.

Done at the city of Lima on the twenty sixth day of July, in the year of Our Lord one thousand eight hundred and fifty one.

[Seal] J Randolph Clay
[Seal] J. Cmo Torrico

sentado primeramente á la otra una relacion ó representacion de tales agravios ó perjuicios, apoyados en suficientes pruebas, y haya pedido reparacion y satisfaccion y que esta se le haya rehusado o retardado sin razon.

4º Nada de lo contenido en este Tratado se entenderá de manera que pueda producir un efecto contrario á los tratados anteriores y vijentes celebrados con otras Naciones ó Soberanos.

El presente Tratado de Amistad, Comercio y Navegacion será aprobado y ratificado por el Presidente de la República del Perú con la autorizacion del Congreso del Perú y por el Presidente de los Estados Unidos de América, con el parecer y acuerdo del Senado de los Estados Unidos; y las ratificaciones serán canjeadas en Washington á los diez y ocho meses de esta fecha ó ántes sí es posible.

En fé de lo cual los Plenipotenciarios de la República del Perú y de los Estados Unidos de América hemos firmado y Sellado el presente. Hecho en Lima el veintiseis de Julio del año del Señor de mil ochocientos y cincuenta y uno.

[Seal] J. Cmo Torrico
[Seal] J Randolph Clay

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NOTES

The signed original of this treaty which is in the treaty file has the English version written on the left pages and the Spanish on the right. Among the other papers in the file are the attested resolution of the Senate of June 23, 1852; the duplicate United States instrument of ratification of July 16, 1852; the certificate of the exchange of ratifications of the same date, which is written in English; and the original proclamation of July 19, 1852. The Peruvian instrument of ratification, dated December 1, 1851, which is written in Spanish, includes the text of the treaty in Spanish only.

Also in the treaty file is the original full power, dated July 16, 1852, given to William Hunter, then Chief Clerk of the Department of State and Acting Secretary of State, to exchange the ratifications.

Accompanying the treaty when it was submitted to the Senate was a copy of the despatch of John Randolph Clay, Chargé d'Affaires at Lima, dated December 6, 1851 (Executive Journal, VIII, 366); that despatch is cited and quoted in part below.

The Full Powers

The preamble of the treaty contains the usual statements regarding the respective full powers; that given to the Peruvian Plenipotentiary, Brigadier General Juan Crisostomo Torrico, Minister of War and Marine and Minister of Foreign Affairs *ad interim*, is not available; it was dated June 23, 1851 (D.S., 8 Despatches, Peru, No. 72, July 8, 1851, and enclosure, translation of a note of June 23, 1851); the full power given to John Randolph Clay by President Fillmore was in customary form and dated January 6, 1851 (D.S., 3 Credences, 385).

A Textual Correction

In Article 37 of the treaty as signed, there was written in the Spanish version "bastará la palabra de honor del Comandante de dicho buque" as the equivalent of the phrase in the English "the word of honor of a commissioned officer, attached to the said vessel, shall be sufficient"; obviously the word "Comandante" should not have been used in the Spanish.

This slip was not noticed until after the signed original for the United States had left Lima; and Clay then "agreed, with General Torrico, to annex a declaration to the Treaty explaining and correcting the error" (D.S., 8 Despatches, Peru, No. 78, September 8, 1851). The declaration was accordingly signed (seemingly later, although dated August 11, 1851) and was transmitted with Clay's despatch of the following December 6 (D.S., 9 Despatches, Peru, No. 84); the declaration was before the Senate (Senate Confidential Document No. 4, 32d Congress, 1st session, Regular Confidential Documents, XXIX, 119–47). Its text follows in the two languages (collated here with that one of the two originals in the treaty file which has the English on the left pages):

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Declaration.

The words—"*Comandante del dicho buque*"—having been erroneously employed, in the Spanish version of Article XXXVII of the Treaty of Friendship, Commerce and Navigation, between the United States of America and the Republic of Perú, signed in this Capital on the 26th of July 1851: to express the words—"*commissioned Officer of the said Vessel*"—employed in the English text of the said Article XXXVII: and whereas the proper signification of the words—"*commissioned Officer*"—is, in the Spanish language, "*Oficial con despacho*"—and not—"*comandante*"; the Undersigned, Plenipotentiaries of the two Nations, declare and agree that the words—"*Oficial con despacho*"—be and hereby are substituted, instead of the word—"*comandante*"; and that they shall have the same force and value, as if they had been used, originally, in the said Article. XXXVII. In faith whereof, We the Undersigned, by virtue of our respective full Powers, have signed the present Declaration and affixed thereto our Seals, at Lima this Eleventh day of August, in the year of Our Lord, one thousand Eight hundred and Fifty One.

[Seal] J Randolph Clay.
[Seal] J. Cño Torrico

Declaracion.

Las palabras—"*Comandante del dicho buque*" habiendo sido empleadas por equivocacion en la version española del Articulo XXXVII. del Tratado de Amistad, Comercio y Navegacion entre la República del Perú y los Estados Unidos de América, firmado en esta Capital el 26. de Julio de 1.851., para expresar las palabras—"*Commissioned officer of the said vessel*"—empleadas en el texto ingles del dicho Articulo XXXVII y en atencion á que el verdadero significado de las palabras—*Commissioned officer*"—*es* en español "Oficial con despacho" y no "*Comandante*"; los infrascritos Plenipotenciarios de las dos Naciones declaran y convienen que las palabras "*Oficial con despacho*", deben ser y son sustituidas en lugar de la palabra "*Comandante*" y que ellas tendrán el mismo valor y efecto que si hubiesen sido originariamente usadas en el referido Articulo XXXVII. En fé de lo cual hemos firmado la presente declaracion en virtud de nuestros plenos poderes, selladola con nuestros respectivos sellos. En Lima al dia once de Agosto del año del Señor Mil ochocientos cincuenta y uno.

[Seal] J. Cño Torrico
[Seal] J Randolph Clay.

Accordingly, in the text following the headnote, the Spanish version is printed as corrected by the declaration; and it will be seen that the correction did not go quite far enough; the Spanish should read "de un Oficial", etc., instead of "del Oficial".

The print of the Spanish version in 10 Statutes at Large, 926–48, does not take account of the correction.

The Negotiations

The Treaty of Peace, Friendship, Commerce, and Navigation of November 30, 1836, between the United States and the Peru-Bolivian Confederation (Document 82), duly went into force on May 28, 1838; the Peru-Bolivian Confederation was short lived, not enduring beyond January 1839; and the treaty mentioned (by Article 30) was subject to termination, "in all points relating to commerce and navigation", upon one year's notice given by either contracting party on or after May 28, 1850. In 1847 the validity of the treaty of 1836 was denied by the Government of Peru (see the notes to Document 82); and on February 9, 1848, a treaty between the United States and Peru was signed at Washington by the Secretary of State, James Buchanan, and the Peruvian Minister, Joaquín José de Osma (D.S., Unperfected B3). That treaty of 1848, of thirty-one articles, was

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in many respects similar to the treaty of 1836, although with much of the wording recast; but there were material changes from the earlier treaty; notably different were the clauses which replaced Articles 3 and 4 of the treaty of 1836; these were Articles 3 to 8, inclusive, of the treaty of 1848, reading as follows in the English version (collated with the original; the treaty of 1848, with other papers, is printed in Senate Confidential Document No. 17, 31st Congress, 1st session, Regular Confidential Documents, XXIII, 989–1049):

ARTICLE III.

The citizens of both countries may frequent all the coasts and ports of the other where commerce may be allowed, may reside and trade there in all kinds of produce, manufactures and merchandize not prohibited, and shall enjoy the same exemptions and privileges as native citizens, submitting themselves to the established laws, decrees and usages to which said native citizens are subjected. This article does not include the coasting trade, which both parties reserve to themselves respectively, and which will be regulated according to their separate laws.

ARTICLE IV.

Vessels of the United States which may arrive in Peru proceeding from a port of the United States, shall not pay, either on entering or clearing, other or higher duties of tonnage or on the cargo which they may carry, whatever may be its class, or origin, than those which national vessels may pay in the like case. And reciprocally, Peruvian vessels which may arrive in the United States proceeding from a port of Peru, shall not pay, either on entering or clearing, other or higher duties of tonnage or on the cargo which they may carry, whatever may be its class or origin, than those which national vessels may pay in the like case.

ARTICLE V.

For the better understanding of the preceding article, and taking into consideration the actual state of the commercial marine of Peru, it has been stipulated and agreed, that all vessels belonging exclusively to a citizen or citizens of said Republic, and whose captain is also a citizen of the same, though the construction or the crew are, or may be foreign, shall be considered, for all the objects of this treaty, as a Peruvian vessel.

ARTICLE VI.

No higher or other duties shall be imposed on the importation into the United States of any article the produce or manufacture of Peru, and no higher or other duties shall be imposed on the importation into Peru of any article, the produce or manufacture of the United States, than are or shall be payable on like articles, being the produce or manufacture of any other foreign country, nor shall any higher or other duties or charges be imposed in either of the two countries on the exportation of any article to the United States or to Peru, respectively, than such as shall be payable on the exportation of like articles to any other foreign country; nor shall any prohibition be imposed on the importation or exportation into the territories or from the territories of both parties, of any articles the produce or manufacture of either, unless such prohibition shall equally extend to all nations.

ARTICLE VII.

Merchants, captains of vessels, and in general all citizens of both countries, shall be allowed to manage, themselves, their own business in the ports and places subject to the jurisdiction of the other, and shall have full liberty to consign and sell their merchandize, purchase returns, and unload, load and send off their vessels; they being in all these cases to be treated as citizens of the most favored nation. They shall be subject, however, to the general taxes or contributions established by law.

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ARTICLE VIII.

The citizens of neither of the contracting parties shall be liable to be detained nor shall their vessels or merchandize be embargoed in the ports of the other for any military expedition, nor shall said citizens be compelled to perform any service of any kind whatever.

The treaty of 1848, with the advice and consent of the Senate (Executive Journal, VII, 480–81, August 12, 1848), was ratified by the United States on September 7, 1848; and the instrument of ratification was sent to Lima for the exchange (D.S., 15 Instructions, Peru, 62–63, September 7, 1848, signed by Isaac Toucey, then Attorney General, as Acting Secretary of State); but the treaty of 1848 failed to go into force because of its rejection by the Peruvian Congress on November 16, 1849, for reasons stated in Clay's despatch of February 12, 1850 (D.S., 8 Despatches, Peru, No. 38; and see the enclosures to that despatch). Anticipating the renewal of negotiations at Washington, Clay, in the despatch last cited, reviewed the articles of the treaty of 1848, with these recommendations:

It may be permitted for me to suggest to you, Sir, that I do not think that the Government can consent to make in a new Convention any changes, or modifications, which would lessen the advantages secured to the commerce of the United States, by the Treaty of the 9th of February 1848. Perfect equality and reciprocity have always been the object of our treaties with foreign nations, and Peru should not pretend to form an exception to our general policy.

Examining the Articles of the before-mentioned Treaty in detail: it would be well, *in a new one*, to make a *Separate Article* of that portion of the *Third* [1] which relates to the *Coasting Trade*, so as to enlighten any members of a future Peruvian Congress who might, like their predecessors, suppose that the treaty admitted the United States to share in it.

The stipulation, in Article IV,[2] placing vessels of the United States upon the same footing as Peruvian, was also violently opposed in the Congress. But this Article, relating as it does to duties of tonnage should not, it appears to me, be changed, or modified, in substance, for Peruvian vessels pay only six and a quarter cents per ton, whereas Articles 102, 103 and 104 of the Commercial Regulations direct as follows:

ART. 102.

"All foreign vessels proceeding from foreign Ports that land all or part "of their cargoes in any Port of the Republic will pay in the first Port where "they commence landing, five dollars anchorage duty and clearing port, "and the sum of five dollars for duties to Captain of the Port, roll and "health. She will likewise pay a quarter of a dollar for every ton she meas- "ures according to her register: and if afterwards she proceeds to another "of the Ports of entry to continue discharging or to load cargo, she will pay "in each one of said Ports the ten dollars abovementioned and not the "tonnage duty."

ART. 103.

"All foreign vessels the moment they anchor in any port of the Republic "become indebted for ten dollars which comprehend anchorage, clearing "port, Captain of the Port, roll and health, and the can load or unload "precious metals only, without paying tonnage duty."

[1] For the wording of Article 3, see above.
[2] For the wording of Article 4, see above.

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ART 104.

"Vessels employed in the Whale and Seal fishery are free of the tonnage "duty, provided they do not land more than the value of $200, which is "considered necessary for their refreshment: but if they exceed this sum, "they are subject to pay the duties beforementioned."

The tonnage duties are heavy upon the merchant vessels of the United States; as those coming to Peru measure three, four, six and sometimes seven hundred tons. It is of some moment therefore, that they should be placed upon an equality with Peruvian vessels in the Article of a new Treaty relating thereto, and it might also include the port dues of ten dollars; though this is of minor importance.

The objection heretofore brought forward by this Government, against admitting foreign vessels into Peruvian ports upon the same terms as national ones, in respect to tonnage duties, is, that there would be no real reciprocity; because no vessels are built within the Republic, owing to the want of wood and other materials, and because few Peruvian vessels ever double Cape Horn and, therefore, they could derive no benefit from stipulations equalizing those duties. This objection referred to the ships of the United States and of Europe, and if applied to the latter may still be plausible; but it has lost its force with regard to the former, since the United States is willing to concede to Peru the important privilege, contained in Article V of the Treaty of February 9th 1848; which provides—"that all vessels belonging exclusively to a citizen or citizens of that "Republic and whose captain is also a citizen of the same, though the construction "and the crew are or may be foreign," should be considered "as a Peruvian vessel:" thus enabling Peruvian citizens to purchase and nationalize foreign vessels and form a commercial marine which could not be constructed in the country. And, since the cession of Upper California, has opened a new sphere to Peruvian Navigation; for *now* the vessels under the flag of that Republic which enter the port of San Francisco must be equal in number to the merchantmen of the United States which come to Callao. Article V [1] would doubtless be inserted in any future Convention with Peru.

The stipulations of Article VI [2] are the same as those employed in the greater number of our treaties, but, in my opinion, a change in them is necessary in negotiating a new treaty with Peru, because the reciprocity seemingly secured to the Commerce of the United States, by the terms of the Article, does not in reality exist. This is shewn by a reference to the Eighty third Article of the Commercial Regulations.

ARTICLE 83.

"All goods and produce coming direct from Europe, Asia and North "America, or by the Isthmus of Panama, to the Ports of Entry of Peru, in "foreign vessels and consigned to foreigners, will pay of the total amount of "Import duties, belonging to the state, ten per cent in documents of reform, "or of the foreign debt, or public credit and the remainder in money. If said "goods and produce should come direct in foreign vessels and consigned to "citizens of Peru, or in national vessels consigned to foreigners, they will "pay twenty per cent in the above-mentioned documents and the remainder "in money: and if they come in National Vessels and consigned to citizens "of the Republic, thirty per cent in documents and the remainder in money. "The merchandise belonging to the Asiatic Company is excepted from the "privileges of this Article."

The public funds mentioned in the preceding article are at a discount varying from forty to eighty per cent, and the privilege of paying a certain amount of the Import duties, in the depreciated paper, was given with the double view of encouraging the trade with distant countries, particularly in Peruvian bottoms; and to reduce the amount of the national debt. Now, although, strictly speaking, the produce or manufactures of the United States cannot be said to pay—"higher or other duties", under the Eighty third Article of the Commercial

[1] For the wording of Article 5, see above.
[2] For the wording of Article 6, see above.

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Regulations; still, as there is a bonus of ten and twenty per cent in favor of the citizens of Peru, in the payment of the duties, depending upon the manner in which the merchandise is imported, its operation would be essentially injurious to the Navigation of the United States were the Peruvians enterprizing, and especially if California be comprised in the words "North America". But as the Commercial Regulations were enacted before the acquisition of Upper California by the United States, and the words, North America, ("Norte America") in Peruvian phraseology mean the Union as it existed before the War with Mexico, this Government considers that California is not included in the provisions of the Eighty third Article. The subject therefore merits consideration.

The stipulations in all the Articles, of the Treaty of the 9th of February 1848, from the Seventh to the Twenty Sixth, inclusive, should in my opinion be retained.[1]

The Twenty Seventh Article[2] might be modified so as to secure to the Diplomatic Agents of the United States, the same favors, prerogatives and immunities, in Peru, as Peruvian Diplomatic Agents enjoy in the United States. It is the usage in the United States to admit articles, destined for the use of foreign Representatives and their families, free of duty, and it is therefore proper that our Agents should have the same courtesy extended to them in Peru. This is now the case, but as the change was made upon my representations, the favor may be taken away at a future time.

There is no apparent necessity to re-model the remaining Articles[3] of the abovementioned Treaty. Stress might, however, be laid upon the provisions in Article XXX, as there is a great aversion, in Peru, to deliver up deserters from foreign vessels and the authorities are inclined to screen them.

By the laws of Peru, no foreigners can leave the Republic without a Passport, upon stamped paper of the value of twelve dollars. Even passengers going from Panama to Valparaiso, who only change the steamers at Callao and remain four or five days, are obliged to take out a passport, unless their names are entered at Panama for the whole voyage. Passports are vexatious in all countries: they are unnecessary and odious in a Republic, and our citizens should be protected by treaty, from such exactions. I have conversed with Mr Tirado upon the subject and he confessed that they should be abolished.

I submit these suggestions to you with great deference, and trust they may be found useful in case negotiations are renewed with Peru.

Following the failure of the treaty of 1848, negotiations for a new treaty went on at Washington soon after the arrival there as Peruvian Minister of José Manuel Tirado, who presented his credentials on May 10, 1850; these resulted in a treaty signed on July 13, 1850, by Secretary of State Clayton and the Peruvian Plenipotentiary (D.S., Unperfected C3). Notwithstanding the suggestions made by Clay in his quoted despatch of the previous February 12, that treaty of 1850, of thirty-two articles, was not much more than a copy of the treaty of 1836 (Document 82); every clause of the treaty of 1836, except the second paragraph of Article 9, was carried almost verbatim into the treaty of 1850; the latter had, however, some new provisions; one of these, Article 4, was the same as Article 5 of the treaty of 1848 (quoted above); a paragraph was added to Article 3, reserving the right to either party to establish discriminating duties, etc., in reciprocity with third states; a sentence was added to Article 27 (Article 25 of the treaty of 1836) which reads thus in the English:

[1] For the wording of Articles 7 and 8, see above; Articles 9 to 26 of the treaty of 1848 are substantially to the same effect as Articles 5 to 23 of Document 82.

[2] Very much the same as Article 24 of Document 82.

[3] Articles 28 to 31, with stipulations quite similar to those of Articles 25, 26, 27, 28, and 30 of Document 82.

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"The Consuls and Vice-Consuls shall not be allowed the use of flags, nor be permitted to assume the right of asylum at their residences, being only authorized to designate their respective houses or places of business by a shield with the arms of the nation they respectively represent"; and finally there was this Article 6 (English version), put forward by Clayton, an article which he "considered indispensable to insert" in the treaty (D.S., 1 Notes to the Peruvian Legation, 29, July 12, 1850; see Nichols, "Latin American Guano Diplomacy", in Modern Hispanic America, 517–43; in House Report No. 347, 33d Congress, 1st session, serial 744, are printed the English version of the treaty of 1850 and the report of the Secretary of State on the negotiations, dated July 11, 1850):

The two contracting parties being desirous to consolidate the friendship now happily subsisting between them by affording mutual protection to their respective interests and industry, it is declared from this time that in the event the Republic of Peru should think proper to decree that the exportation of Peruvian guano to foreign countries shall be effected by disposing of said guano in Peruvian ports or places to such vessels or citizens of foreign nations as may come there in search of it, by paying a certain price or duty upon the quantity taken away, in such case, the aforesaid Republic of Peru shall not exact from citizens or vessels of the United States that may go there in search of guano, in competition with those of other nations, a higher price or higher duties than what they may exact from the vessels and citizens of the most favored nation.

The treaty of 1850 and the papers accompanying it when submitted to the Senate, are printed in Senate Confidential Document No. 17, 31st Congress, 1st session, Regular Confidential Documents, XXIII, 989–1049. The full power[1] to Clayton was issued on July 13 (D.S., 3 Credences, 368); on the same day the treaty was signed at four o'clock in the afternoon (D.S., 1 Notes to the Peruvian Legation, 29, July 12, 1850); earlier on that day the funeral of President Taylor, who had died in the evening of July 9, took place; President Fillmore had taken the oath of office on July 10, at noon (see Richardson, V, 52–56).

Following the advice and consent of the Senate (Executive Journal, VIII, 246, September 24, 1850), the treaty of 1850 was duly ratified by the United States under date of November 14, 1850, and the instrument of ratification was transmitted to Clay at Lima for the exchange (D.S., 15 Instructions, Peru, 75–77, January 4, 1851); but Clay had already informed this Government that Article 6 of the treaty of 1850 was strongly objected to by the Government of Peru; the Peruvian Executive, General Ramón Castilla, was "inflexible and determined to exclude the subject [of guano] entirely from the treaty" and was "much excited against Mr Tirado, for consenting to insert an article upon Huano which was not mentioned in his instructions" (D.S., 8 Despatches, Peru, No. 55, October 5, 1850; and see the enclosures to that despatch); that objection was maintained by the succeeding administration under General José Rufino Echenique as President, who "would willingly have ratified the treaty concluded by M[r]

[1] The original of this full power is in the Library of Congress, 9 Clayton Papers, 1764.

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Clayton with Mr Tirado, were it not that the Government had resolved not to permit the article of Huano to form a subject of negotiation in any treaty concluded with a foreign power: that Huano was the property of the nation and he did not think it expedient to make any stipulation that might embarrass its sale or exportation: that, therefore, he must decline presenting the treaty to the Congress. Besides, he was convinced that the Chambers would never sanction the insertion of an Article in relation to Huano" (*ibid.*, No. 70, June 7, 1851; and see the enclosures to that despatch); so the treaty of 1850 was not submitted to the Peruvian Congress and failed to go into force.

In his despatch of February 12, 1850, quoted in part above, Clay had made various suggestions regarding the terms of a new treaty, in view of the failure of the treaty of 1848; and when he learned of the objections to the treaty of 1850, he returned to the subject even more fully in his despatch of October 5, 1850 (*ibid.*, No. 55), from which these paragraphs are excerpted; the article numbers therein mentioned are those of the treaty of 1850; footnotes refer to the corresponding articles of the treaty of 1836 (Document 82):

Article Third [1] places the citizens of both countries on an equality with those of the most favored nation. They are to enjoy the same liberty of trading with the ports of each and are not to pay other or higher duties, charges or fees, either on their vessels or cargoes than the most favored nation: the coasting trade is excepted and they reserve the right of establishing discriminating duties, exemptions and privileges upon particular foreign articles with a view of obtaining similar concessions upon particular articles of their own production.

The terms of this Article are general and, consequently, somewhat vague. No special mention is made of tonnage duties and, although the words—"duties, charges or fees"—are doubtless intended to include them, a question might arise as to their meaning, which is to be avoided. Besides, national vessels only pay six and a fourth cents per ton in Peruvian Ports, whereas foreign vessels are charged twenty five cents per ton. To avoid this inequality, the treaty between Great Britain and Peru, signed in London on the 10th of April last,[2] stipulates that British vessels measuring two hundred tons, and upwards, are to pay the same tonnage duties, in the ports of Peru, as national vessels; if they measure less than two hundred tons, they continue to pay the higher rate of twenty five cents per ton. This is tantamount to placing British vessels upon an equality with Peruvian, as few, if any, of the former, engaged in trade with the Republic, are of less burthen than two hundred tons. The Convention with Great Britain will probably be ratified by the next Congress of Peru and there is no reason that the treaty with the United States should not contain a similar provision.

I would also propose to insert an Article exempting *Steamers* from the payment of all tonnage duties, whatever may be their measurement. It is well known that the machinery and coal, with other arrangements on board, occupy so much room that a Steamship registering a thousand, or twelve hundred tons, will not carry over three hundred and fifty, or four hundred, tons of cargo; whilst the real burthen of sailing vessels of the same class is not unfrequently one third and even one half more than their registered tonnage. It is not just, therefore, that steamers should be charged with tonnage duties in the same ratio as other vessels; as those duties should be levied according to the capacity of the vessel to carry cargo, rather than upon tonnage entered in her register. This distinction is important; and it might be wise to abolish tonnage duties altogether, with respect to those nations who shall agree to place the navigation of the United

[1] Article 3 of the treaty of 1850 is the same as Article 3 of Document 82, except for an added paragraph regarding discriminating duties of which the despatch here gives a fair summary.

[2] Text in British and Foreign State Papers, XXXVIII, 20–32.

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States upon the same footing; and to retain them only as a means of inducing powers with whom we have no treaties, or whose regulations are onerous, to adopt a more liberal policy.

Article third also reserves the right in either of the parties to establish discriminating duties, exemptions and privileges upon particular articles the manufacture and produce of other foreign countries, to obtain the same terms from them for particular articles of national manufacture or produce. This clause is, in some sort, an exception to the general principle of reciprocity pervading the treaty; but the effect of it, seemingly, might be counteracted at any moment. For, as the discriminating duties, exemptions and privileges would be granted for some consideration, given by the foreign nation, the other party to the treaty, if it wished to participate in them, could revert to the provisions of Article Second and, upon offering a like consideration, claim the same concession: since all favors in commerce and navigation shall, "immediately", be enjoyed "on allowing the same compensation if the concession was conditional."

I think, therefore, that the third Article should be remodled and the substance of it divided into several distinct Articles, somewhat in the following manner.

ARTICLE III.

The two high Contracting Parties being likewise desirous of placing the commerce and navigation of their respective countries upon the basis of entire and perfect reciprocity, mutually agree that the citizens of each Republic may frequent with their vessels all the ports and places of the other wherever foreign commerce is permitted and may reside in all parts whatsoever of said territories and trade there, according to the rules established by their respective regulations of commerce, in all kinds of produce, manufactures and merchandise not prohibited to all, and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing.

ARTICLE IV.

Vessels of the United States, measuring two hundred tons and upwards, of register, which may arrive, either laden or in ballast, in the ports of Peru, proceeding from a port of the United States, shall not pay, either on entering or clearing, other or higher duties of tonnage, port charges, or fees and perquisites of public officers than those which national vessels may pay upon entering and clearing: and, reciprocally Peruvian vessels, measuring two hundred tons and upwards, of register, which may arrive, either laden or in ballast, in the ports of the United States, proceeding from a port of Peru, shall not pay, either on entering or clearing, other or higher duties of tonnage, port charges, or fees and perquisites of public officers than those which national vessels may pay upon entering and clearing. But it is expressly understood that vessels of either nation, measuring less than two hundred tons, of register, shall be subject to and pay the tonnage duties, port charges, fees and perquisites of public officers, established by the commercial regulations of the respective countries.

ARTICLE V.

With a view to the encouragement and extension of steam navigation, the two high contracting parties have, mutually, agreed, that the Steamers, or vessels propelled by steam, of whatever tonnage they may be, belonging to their citizens, may, reciprocally, enter and clear from the ports of both the contracting parties, without paying any duties of tonnage whatever: it being the intention of the parties that the said steamers, or vessels propelled by steam, shall be exempt from all duties of tonnage paid by other vessels.

ARTICLE VI.

All kinds of merchandise and articles of commerce which may be lawfully imported into the ports of Peru, in Peruvian vessels, may, also, be so imported

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in vessels of the United States, without paying other, or higher duties, or charges of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever than if the same merchandise or articles of commerce had been imported in Peruvian vessels and for account of, or consigned to Peruvian citizens. And, reciprocally, all kinds of merchandise and articles of commerce which may be lawfully imported into the ports of the United States, in vessels of the United States, may also be so imported in Peruvian vessels, without paying other or higher duties or charges of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever, than if the same merchandise and articles of commerce had been imported in vessels of the United States and for account of, or consigned to citizens of the said States.

It is understood that the stipulations in this Article are, to their full extent, applicable to vessels of the United States and their cargoes arriving in the ports of Peru, and, reciprocally, to Peruvian vessels and their cargoes arriving in the ports of the United States.

ARTICLE VII.

All kinds of merchandise, articles of commerce and articles the product or manufacture of the United States, which may be, lawfully, exported from the United States, in national or foreign vessels, may also be exported therefrom in Peruvian vessels, without paying other or higher duties, or charges, of any kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever, than are or may be payable upon the like articles when exported in national vessels, or vessels of the most favored nation: and reciprocally, all kinds of merchandise, articles of commerce and articles the product or manufacture of Peru, which may be, lawfully, exported from Peru, in national or foreign vessels, may also be exported therefrom in vessels of the United States, without paying other or higher duties, or charges of any kind or denomination, levied in the name, or to the profit of the Government, the local authorities, or of any private establishment whatsoever, than are or may be payable upon the like articles when exported in national vessels, or vessels of the most favored nation.

The provisions inserted in Article VI, which I have the honor to propose, are necessary to place the commerce of the two countries upon an equality, because, by the Eighty third article of the Commercial Regulations of Peru, there is a bonus of ten and twenty per cent, in favor of Peruvian citizens, in the payment of import duties, upon merchandise brought round Cape Horn, or by the Isthmus of Panama, depending upon the character of the vessels in which such goods are imported and whether they are consigned to natives or foreigners. (See Despatch Nº 38. to the Secretary of State [quoted in part above].)

Article Fifth [1] of the Treaty of the 13th of July [1850], contains the following:—"The citizens of neither of the Contracting Parties shall be liable to any embargo; "nor to be detained with their vessels, cargoes merchandise and effects for any "military expedition, nor for any public or private purpose whatever without "being allowed therefor a sufficient indemnification."

That there may happen a crisis in the affairs of a State—one upon which the very existence of the Government may depend—in which it would be authorised, under the law of nations, to make use of the vessels or property of foreign citizens, to provide for the public safety, upon paying a proper indemnification for the same, is unquestionable. But it scarcely can be admitted that the vessels or the merchandise of foreign citizens can, under any circumstances, be taken for a *private* purpose, without the consent of the owners, although an indemnification be offered for it; because it is only the supreme necessity of the moment which authorises the appropriation of the property for the public weal. Moreover, in those cases where the Government may be justified in using the property of foreign citizens, for its own purposes, the compensation should always be paid in advance,

[1] Like Article 4 of Document 82.

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since it is well known that there are but few instances, in which an indemnification granted by a South American Government, to the parties who suffered by its acts, has been equal to the loss sustained by them and where it was obtained without great difficulties and delays. I would, therefore, propose to change the phraseology of the Article so as to read thus. "The citizens of neither of the Contracting "Parties shall be liable to any embargo, nor to be detained with their vessels, "cargoes, merchandise and effects for any military expedition, nor for any "*public* purpose whatever, without being allowed therefor a full and sufficient "indemnification, which shall in all cases be paid in advance. Neither shall "they be called upon for any forced loan or occasional contributions, nor be "subject to military service by land or sea."

. . . . . .

Article twenty Seventh [1] is the next which, it appears to me, should be modified. The last sentence of it is, as follows: "The Consuls and Vice Consuls shall not be "allowed the use of flags, nor be permitted to assume the right of asylum at their "residences, being only authorised to designate their respective houses or places "of business by a shield with the arms of the nation they respectively represent."

This stipulation is not to be found in any treaty hitherto negotiated by the United States, with a foreign power; for although the Second Article of the Convention with France, of the 14th of November 1788 [Document 15], provides that Consuls "shall place over the outward door of their house the arms of their "Sovereign", yet it does not expressly prohibit them the use of Flags. I am aware that in most Capitals of European Nations, neither Diplomatic Agents, nor Consuls use flags, and they are unnecessary in countries whose Governments are not continually exposed to revolutions and where the people are sufficiently enlightened to understand, that foreigners have certain rights and foreign Consuls certain privileges and that their houses are entitled to a certain respect. But in these South American Republics, the people, at large, know no difference between one foreigner and another—they dislike them all—and the ignorant Indians, inhabiting the interior and the coast, removed from the Capital, have probably, never heard of a Consul and, in popular tumults, the shield with the arms of any nation might be overlooked, or mistaken, by them, for a business sign, whereas the flag is visible and commands respect as soon as it is unfurled.

The flag does not confer other or greater rights than the shield and the violation of the residence of a Consul bearing either would be an offence of equal gravity. Neither gives to Consuls the right of asylum and, I believe, they have never claimed it upon this coast. The flag, however, possesses this advantage over the shield, that during political troubles and revolutions, it marks more distinctly the Consular residence and affords greater protection to the citizens of the country it represents. Lastly, as the Consuls of all other nations are permitted the use of flags, in Peru, those of the United States may justly claim the same privilege.

The thirtieth Article [2] of the treaty might be so modified as to dispense with the exhibition of the ships roll in cases of desertion from vessels of War and the word of a commissioned officer attached to the vessel should be sufficient, in such cases, to identify and cause the arrest of the deserter, without making a formal demand in writing. This would save great trouble and delay in countries where the course of justice is slow and uncertain.

An article should be added to the Treaty by which the Peruvian Government should consent to abolish passports. Both New Granada and Chile have done so, and in a Republic they are useless, vexatious and odious.

I have deemed it my duty to offer to the Department the preceding remarks upon the treaty recently signed at Washington, and trust they may be of some use in the premises. I beg leave, in conclusion, to repeat the opinion that treaties of Commerce and Navigation, with Peru, should be negotiated in Lima, rather than in Washington, because this Government is continually altering its commercial regulations and a great change has taken place, in the importance and frequency of its relations with the United States, since the annexation of California. Other and greater interests will doubtless arise in future, which an Agent, on the spot, can probably mark and protect easier than can be done from

[1] Cf. Article 25 of Document 82.
[2] Like Article 28 of Document 82.

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a distant point where higher and more urgent affairs demand the attention of the negotiators.

I believe that the Peruvian Government would *now* prefer that the treaty should be negotiated in Lima, as a friend and confidential adviser of the President has told me that if full powers were sent to me to negotiate a Convention, he knew that a satisfactory one could be concluded.

In the instruction which acknowledged Clay's despatch No. 55, the ratification of the United States of the treaty of 1850 was enclosed, and hope for the completion of that treaty was expressed; but there were these alternative directions from Secretary of State Webster (D.S., 15 Instructions, Peru, 75–77, January 4, 1851):

If, however, the Peruvian President should decline laying the instrument [of 1850] before their Congress or if it should fail to meet the approbation of that body, considerations of dignity and propriety will forbid any further attempt for the present at negotiating at Washington another treaty with Peru, the one concluded by Mr. Buchanan with Osma having also been rejected by the Congress of that Republic after it had been approved by the Senate and ratified by the President of the United States. As it is desirable, however, especially in view of the increasing intercourse between Peru and California, that the commercial relations between the United States and that country should be regulated by a treaty of some description, the President has thought proper to authorize you in the contingency adverted to to negotiate a new one at Lima, for which you will herewith receive a Full Power. It is to be hoped that you may be able to induce the negotiator on their part to agree to the modifications of the one concluded by Mr. Clayton and Mr. Tirado, which, in your despatches Nos. 38 and 55, you point out as being desirable and which your observations upon the course of the trade during your residence at Lima have enabled you to suggest. If, however, you should succeed in concluding a Treaty which in your opinion would be acceptable to your own government, it would be indispensable that it should be ratified by the Peruvian Government before being sent hither for ratification by the government of the United States, and that the ratifications should be exchanged in this City.

. . . . . .

Mr. Albert Fitz, the bearer of this communication, may be detained at Lima two months to await the exchange of the ratifications of the Treaty and to bear with him on his return the ratification of the Peruvian Government. If, however, that government should not ratify the treaty and you should consequently conclude a new one, you may detain him three months for the purpose of enabling him to bring hither the ratification thereof by that government and the original for the consideration of the President and Senate of the United States.

The instruction last cited reached Callao on March 6 (D.S., 8 Despatches, Peru, No. 65, March 8, 1851); when Clay found that the ratification by Peru of the treaty of 1850 would not be forthcoming, he stated that he had a full power to treat and was told by General Torrico in reply "that the President would give full powers to M[r] Osma [who, when Peruvian Minister at Washington, had signed the treaty of 1848, and who at this time was President of the Chamber of Deputies, and later again Minister to the United States], to conclude a treaty" (*ibid.*, No. 70, June 7, 1851); by note of June 11 Clay formally communicated the fact of his full power; and to this, as Clay wrote, "General Torrico replied on the 23[d] of June, stating that the President had conferred full Powers on him to treat with me. The preliminary steps will, however, be made by M[r] Osma and when the articles have been arranged between him and myself, the negotia-

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tion will be continued with General Torrico, who will sign the Treaty as Plenipotentiary of the Peruvian Government" (*ibid.*, No. 72, July 8, 1851, and enclosures); the draft treaty which Clay put forward is not textually available but is amply described in the despatch last cited, from which these paragraphs are excerpted:

I have submitted a draught of the treaty to the Peruvian Government, for its consideration, and the principal points in which it differs from the one, signed at Washington on the 13th of July last, are as follows:

1. To place our vessels, measuring over two hundred tons, upon an equality with Peruvian vessels, in the payment of tonnage and port dues, in Peruvian Ports and exempting vessels chartered expressly to carry Huano, from all tonnage and port charges whatsoever.

2. Placing the two nations upon an equality, in the payment of duties upon merchandise and articles of Commerce, imported into and exported from their respective Ports.

3. Securing to vessels, belonging to citizens of the United States, the right of discharging parts of their cargoes at different ports of Peru, during the same voyage, and of loading, in the same manner, on their outward voyage.

4. A stipulation, that any citizen of the United States who may establish steamers, within the territories of Peru, shall enjoy the same privileges and advantages accorded to the "Pacific, Steam Navigation Company", in taking in and discharging freight and carrying passengers, between the different ports of the Republic.

5. Granting to Whale Ships the right to sell, without paying tonnage or port dues and free of duty, articles and oil, to the amount of two hundred dollars to obtain supplies; and merchandise and oil, to the additional amount of one thousand dollars paying duty thereon, but with exemption from tonnage and port dues.

6. Stipulation, that whatever privileges may be granted to citizens of other nations, in digging or working for gold on the public lands, in the State of California, shall be also enjoyed by Peruvian citizens.

7. Omitting the clause in Article XXVII depriving Consuls of the use of flags.

8. Stipulating, that the word of honor of a commissioned Officer of a ship of war shall be sufficient, to identify deserters from such ship, so as to insure their arrest and detention.

9. Providing, that the Consuls and Vice Consuls shall be *ex officio* the Executors, or administrators, of their countrymen dying within their Consular jurisdiction, without a legal representative.

The preceding are the principal changes, which I have made in the treaty, signed by Mr Clayton and Mr Tirado; there are also other additions of minor importance.

I have held one conference with Mr Osma, and he has taken the draught of the treaty, to examine into the provisions and consult with the President upon them.

There may be difficulty in inducing the Peruvian Government to accede to some of the proposed modifications: but, I believe, the greater part will be adopted. There is every reason to hope, that the Convention will be signed before the opening of the Ordinary Sessions of Congress, on the 28th of this month. In that event, I shall press for its immediate presentation to that body for approval, so that the ratification of the Peruvian Government may be received at the Department, before the meeting of the Congress of the United States.

I beg to be authorised to employ a person to bear the treaty to the United States, for I think that few individuals can be found willing (as suggested in Despatch No 23 from the Department) "to take charge thereof without expense "to the Government", because there is a certain responsibility in conveying a document of that kind, which most persons would not gratuitously incur.

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The proposals of Clay were for the most part accepted; his report on the treaty was made by his despatch of August 8, 1851, in these terms (*ibid.*, No. 75):

I have the honor to inform you, that a treaty of Friendship, Commerce and Navigation was signed in this Capital, on the 26th ultimo, by myself, as plenipotentiary of the United States of America, and Brigadier General, Don, Juan, Crisostomo Torrico, as plenipotentiary, on the part of the Republic of Peru. The treaty is comprised in forty Articles, and is in the English and Spanish languages.

In remarking upon the provisions of the Treaty, I beg to refer to despatches Nos 38. and 55. addressed to the Department of State, on the 12th of Febr[y] and 5th of October 1850, in which will be found Copies of some of the Articles of the Peruvian Commercial regulations, and, also, observations particularly connected with the subject.

The treaty just negotiated differs from those previously concluded with Peru in the following Points.

Article II, besides securing the reciprocal right of Commerce and Navigation and residence, to the citizens of the respective parties, provides that their dwellings and warehouses shall not be subjected to arbitrary visits or search; that they shall have the right of trading, opening retail stores and shops upon the same terms as native citizens; that their books, papers and accounts shall not be examined without a legal order from the proper authority: gives protection to the respective citizens and the free right of travelling. Besides the usual stipulation, protecting the citizens from forced loans and contributions, embargo and detention, without a sufficient indemnification, a proviso is added that the indemnification is always to be agreed upon and paid in advance. The privilege of opening retail stores and shops was inserted because by a decree of the Bolivian Government, issued some time ago, foreigners were prohibited from retail dealing, and I wished to prevent the Peruvian Government from following that example.

The wording of Article III is changed, so that where a "compensation" must be given to enjoy a favor, in commerce or navigation, granted conditionally to a third nation, it is to be, "as nearly as possible, of proportionate value and effect to be adjusted by mutual agreement", and not absolutely the "same", as is stipulated in the former treaties.

The provision in Article IV, relative to tonnage duties &c, virtually places the vessels belonging to citizens of the United States upon an equality with Peruvian; for few of those engaged in the trade with the ports of Peru measure under two hundred tons. The number of vessels of the United States which entered the port of Callao, from the 1st of January to the 30th of June 1851, was eighty one, measuring 30.918 tons and of these only nine were under 200 tons, one of which measured 198 tons.

By the 102d Article of the Peruvian Commercial Regulations, foreign vessels pay at present a tonnage duty of twenty five cents per ton, and Peruvian only six and one quarter cents. The stipulation in Article IV makes the important reduction of Eighteen and three quarters cents, per ton, in favor of Vessels of the United States.

The concession made by the Peruvian Government in Article V, that the same rate of duties shall be paid upon merchandise imported in Vessels of the United States as when imported in Peruvian vessels, is also of importance: for by the 83d Article of the Commercial regulations there is a bonus of twenty and thirty per cent, in favor of Peruvian citizens, varying according to the character of the vessels and the consignment of the cargoes. The distinction, made therein, is done away with, by the present Article fifth. (see Despatch Nº 38. February 12. 1850.) The indirect Trade is also secured by this Article.

The stipulations contained in Articles VI and VII were consigned to separate Articles, for the sake of clearness and precision.

Article VIII is not to be found in any of our treaties and is designed to protect our citizens from losses, that might be occasioned by the enactment of changes, in the Peruvian tariff, having a retroactive effect. The Article was first suggested, by a change of that nature made in the tariff of Russia in 1845, during my residence in St. Petersburg. (see Despatches Nos 4 and 8 dated March 5/17 and

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May 18/30 1846 [D.S., 15 Despatches, Russia].) Such laws are fortunately of rare occurrence, but I think it is well to provide against their effects, in countries where correct principles of Commerce are not understood and where little regard is paid to the rights or interests of foreigners, in times of disturbance and revolution.

Article IX reserves the coasting trade to the two parties, but secures to their vessels the right of discharging and taking in their cargoes, at different ports of entry in the same voyage, upon equal terms with national vessels.

By the stipulations in Article X, the Peruvian Government grants to citizens of the United States, the same privileges heretofore enjoyed and monopolised by the British Association, known by the name of the "Pacific Steam Navigation Company". It is to be hoped, that some of our enterprizing citizens will take advantage of this concession to place a line of Steam Vessels on this coast: and it would be politic in the Government of the United States to encourage and assist the undertaking as, thereby, an uninterrupted chain of communication would be kept up from Valparaiso, or even Talcahuano,[1] to California and Oregon. The advantages of such a line are palpable and in the event of war, incalculable.

Article XI is the same as Article IV of the Treaty signed at Washington on the 13th of July 1850.

Article XII—The provisions in this Article are similar to those contained in the seventh Article of the Treaty with the Hawaiian Islands [Document 138], and, I trust, will be of great service to our whaling interests.

By the stipulations of Article XIII, the merchants, commanders and masters of vessels are guaranteed the full and entire liberty of managing their own business, by themselves or through Agents.

Article XIV. The privilege accorded by this Article is merely nominal and was inserted to correct the mistaken impression, entertained by the public in Peru, that Peruvian citizens were not placed upon an equality with other foreigners in the state of California.

Articles XV and XVII are similar to Articles XI and IX, of the Treaty signed February 9th 1848; and Articles XVI and XVIII, to the 9th and 8th Articles of the Treaty of the 13th July 1850; though the stipulations in the present Treaty are more ample.

Article XIX—The provisions in this are the same as those contained in the former treaties, with a clause to protect citizens of the United States from illegal arrest and imprisonment. This addition was suggested by the proceedings against Dr Kinney—see Despatch N° 69 May 26. 1851 [D.S., 8 Despatches, Peru].

Article XX, securing religious liberty and the right of burial, and Articles XXI to XXXIII, inclusive, in relation to neutral rights, are, in substance and nearly word for word the same, as the articles upon those subjects, contained in the former treaties between the United States and Peru, with the exception that in the definition of a good and effective blockade, in Article XXIV of the present treaty, the words, "*invested or*", are inserted *before* the words, "attacked" by a force capable of preventing "the entry of the neutral".

Articles XXXIV to XXXVIII, in relation to the admission and privileges of Diplomatic and Consular Agents, are similar to those of the Treaty of February 9th 1848 with the exception in Article 37, which provides, that the word of honor of a commissioned officer shall be sufficient to identify deserters from a ship of war.

Article XXXIX stipulates that the Consuls and Vice Consuls, of the respective parties, shall be, in the absence of the legal representatives, *ex officio*, the Executors or Administrators of their countrymen, dying within their consulate districts; and regulates the manner of proceeding in such cases and of disposing of the property. Some provision of the kind was necessary, as the Peruvian authorities usually wish to interfere in the settlement of the estates of deceased foreigners, and, in many instances, tedious and vexatious lawsuits have arisen therefrom. Whereas, if the liquidation be left to the consul, as Executor or Administrator, the estate would probably be closed without any unnecessary delay, or annoyance.

[1] The seaport for Concepción, Chile, in approximately latitude 36°45′ south.

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The duration of the Treaty is limited to ten years, by Article XL; with the usual provision continuing it, from year to year, unless notice to the contrary be given by one of the parties. The clauses binding the citizens of both to its observance, and the manner of proceeding in case of an infringement of any of the provisions are added. The ratifications of the Treaty to be exchanged, at Washington, within eighteen months from the date of the signature thereof, or sooner if possible.

The Peruvian negotiator insisted upon the suppression of the word "*Peace*", in the title of the Treaty, and the clause rendering permanent and perpetual those parts which relate to Peace and Friendship; for the reason that the two countries were at peace, already, and therefore the treaty "could not strictly be called one of Peace": and that inconvenience might arise from an agreement that any part of the treaty should be perpetual. As I did not think it of much importance that the word, or the clause, should be retained, I consented to omit them.

I shall press the Peruvian Minister to submit the Treaty to the Chambers, for their approval, at as early a date as possible. Nevertheless, I do not think it will be acted upon by the Legislature, for some weeks, as there is always difficulty in convening a joint Session of the two chambers.

I trust that the Treaty may meet with the approbation of the President, and that it will prove advantageous to the interests of the United States.

The treaty instrument was sent to the United States in charge of Mrs. Frederick Frye, of New York, who sailed from Callao on August 9 (D.S., 8 Despatches, Peru, No. 75, August 8, and No. 77, August 9, 1851). Acknowledgment was made by the instruction of September 19, 1851, signed by William S. Derrick, then Chief Clerk of the Department of State, wherein it was said that the treaty "appears to be judiciously framed and in many respects an improvement upon those which the Peruvian government failed to ratify" (D.S., 15 Instructions, Peru, 80).

The Peruvian Congress was holding from July 28 (D.S., 8 Despatches, Peru, No. 65, March 8, 1851); following consideration in committee (*ibid.*, No. 79, October 8, 1851), the necessary joint session for action on the treaty took place on November 18, when the treaty was approved; and Clay was duly informed that the treaty had been ratified on December 1 by the Government of Peru (9 *ibid.*, No. 84, December 6, 1851). From the despatch cited, this paragraph is quoted:

It is important that the present Treaty should be ratified, on the part of the United States, at the earliest convenient date: because the changes, in the Peruvian Commercial Regulations, rendered indispensable by its stipulations, can only be made after the ratifications are exchanged. Until those alterations shall be effected, the commerce and navigation of the United States cannot take advantage of the reduction in the tonnage duties, or of the provision in favor of Whale Ships.

Regarding the Peruvian commercial regulations, Clay wrote on April 18, 1852, as follows (*ibid.*, No. 98; see the convention with Peru signed at Lima July 4, 1857):

The Peruvian Government has published new Commercial Regulations, in compliance with an act of the Congress of the Republic, passed on the 13th of October 1851. They are comprised in twenty six Chapters and three hundred and ten Articles; to take effect in three months, after the 21st of March last, for products of nations situated on the shores of the Pacific, and in six months, for

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produce of other parts of the world—whether the same be already deposited in the Custom house or shall be imported in future.

I have the honor to annex a translation of the most important articles. . . .

The present Regulations are most liberal, especially with respect to navigation; as foreign vessels are admitted to participate, to a great extent, in the Coasting Trade, and may enter places heretofore prohibited. Articles 81. and 110. do not, however, accord with the stipulations in Article XII of the Treaty signed in this city on the 26th of July last. It is desirable, therefore, that the treaty should be ratified and exchanged, at Washington, as early as possible; so that the whale ships of the United States may enjoy the benefit of those stipulations. No demand for their fulfilment can, of course, be made, to the Peruvian Government, before the ratification of the treaty takes place, on the part of the United States. There are also some minor points in the Commercial Regulations to be adjusted, after the treaty is promulgated.

Termination of the Treaty

Article 22 of this treaty was in part "annulled and revoked" by Article 2 of the convention of July 22, 1856, declaring the rights of neutrals at sea; Article 12 was interpreted by the explanatory convention of July 4, 1857; and this treaty of 1851 (and therewith the interpretative convention of 1857) was terminated by notice from the Government of Peru dated December 9, 1862, effective one year later (D.S., 3 Notes from the Peruvian Legation; see D.S., 1 Notes to the Peruvian Legation, 228–29, December 15, 1862).

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Treaty Series No. 159
10 Statutes at Large, 961-63
18 *ibid.*, pt. 2, Public Treaties, 404-5

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HANSEATIC REPUBLICS : APRIL 30, 1852

Convention for the Mutual Extension of the Jurisdiction of Consuls, signed at Washington April 30, 1852. Original in English and German.
Submitted to the Senate May 5, 1852. (Message of May 1, 1852.) Resolution of advice and consent August 30, 1852. Ratified by the United States September 24, 1852. Ratified by Lübeck November 24, 1852; by Hamburg December 17, 1852; and by Bremen January 5, 1853. Ratifications exchanged at Washington February 25, 1853. Proclaimed June 6, 1853.

Convention for the mutual extension of the jurisdiction of Consuls, between the United States of America and the Free and Hanseatic Republicks of Hamburg, Bremen and Lubeck.

The United States of America and the Free and Hanseatic Republicks of Hamburg, Bremen and Lubeck, having agreed to extend, in certain cases, the jurisdiction of their respective Consuls, and to increase the powers granted to said Consuls by existing Treaty-Stipulations,—have named for this purpose, as their respective Plenipotentiaries to wit: the President of the United States of America, Daniel Webster, Secretary of State of the United States—and the Senate of the Free and Hanseatic City of Hamburg, the Senate of the Free and Hanseatic City of

Vertrag über die gegenseitige Ausdehnung der richterlichen Befugnisse der Consuln zwischen den Hanseatischen Freistaaten Hamburg, Bremen und Lübeck und den Vereinigten Staaten von Nord-Amerika.

Nachdem die Hanseatischen Freistaaten, Hamburg, Bremen und Lübeck und die Vereinigten Staaten von Nord-Amerika übereingekommen, in gewissen Fällen die richterlichen Befugnisse ihrer respectiven Consuln auszudehnen und die denselben vermittelst bestehender Vertrags-Bestimmungen gewährten Rechte zu erweitern, so sind zu dem Ende von beiden Seiten Bevollmächtigte ernannt worden, nämlich: von Seiten des Senats der Republik und freien Hansestadt Hamburg, des Senats der Republik und freien Hansestadt Bremen und des Senats der Re-

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Bremen and the Senate of the Free and Hanseatic City of Lubeck—Albert Schumacher, Consul General of Hamburg and Bremen in the United States—who, having exchanged their full Powers, found in due and proper form, have agreed to, and signed the following articles:

ARTICLE I.

The Consuls, Vice Consuls, commercial and vice-commercial agents of each of the high contracting parties shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the masters and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the master should disturb the order or tranquillity of the country; or the said Consuls, Vice Consuls, commercial agents or vice-commercial agents should require their assistance in executing or supporting their own decisions. But this species of judgement or arbitration shall not deprive the contending parties of the right they have to resort, on their re-

publik und freien Hansestadt Lübeck, Herr Albert Schumacher, General-Consul von Hamburg und Bremen in den Vereinigten Staaten, und von Seiten des Präsidenten der Vereinigten Staaten von Nord-Amerika, Herr Daniel Webster, Staats-Secretair der Vereinigten Staaten, welche nach vollzogener Auswechselung ihrer in gültiger Form befundenen Vollmachten die folgenden Artikel festgesetzt und unterzeichnet haben:

ARTIKEL I.

Die Consuln, Vice-Consuln, Handels- und Vice-Handels-Agenten sollen das Recht haben, als solche, bei Streitigkeiten welche zwischen den Capitainen und Mannschaften der Schiffe der Nation, deren Interessen sie wahrzunehmen beauftragt sind, entstehen mögen, als Richter und Schiedsmänner zu handeln, ohne Dazwischenkunft der Orts-Behörden, wenn nicht etwa das Benehmen der Mannschaften oder des Capitains die Ordnung oder Ruhe des Landes stört, oder die besagten Consuln, Vice-Consuln, Handels-Agenten oder Vice-Handels-Agenten deren Beistand zu Vollziehung oder Aufrechthaltung ihrer Entscheidungen in Anspruch nehmen. Es versteht sich jedoch, daß diese Art von Urtheil oder schiedsrichterlicher Entscheidung die streitenden Theile nicht des

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turn, to the judicial authority of their own country.

ihnen zustehenden Rechts berauben soll, bei ihrer Zurückkunft an die richterliche Behörde ihres eigenen Landes sich zu wenden.

ARTICLE II.

The present Convention shall be in force for the term of twelve years, from the day of its ratifications; and further until the end of twelve months, after the Government of the United States on the one part, or the Free and Hanseatic Republicks of Hamburg, Bremen or Lubeck, or either of them, on the other part, shall have given notice of their intention to terminate the same; each of the contracting parties reserving to itself the right of giving such notice to the other, at the end of the said term of twelve years;—and it is hereby agreed, that, at the expiration of twelve months after such notice shall have been received by either of the parties from the other, this Convention and all the provisions thereof, shall altogether cease and determine, as far as regards the States giving and receiving such notice; it being always understood and agreed, that, if one or more of the Free and Hanseatic Republicks aforesaid, shall, at the expiration of twelve years from the date of the ratification of the Convention, give or receive notice of the termination of the same—it shall, nevertheless, remain in full force and operation, as far as regards the remaining Free and Hanseatic

ARTIKEL II.

Der gegenwärtige Vertrag soll vom Tage der Ratifications-Urkunden an gerechnet, zwölf Jahre in Kraft bleiben und überdem bis nach Ablauf von zwölf Monaten, nachdem die eine oder die andere der Regierungen der Hanseatischen Freistaaten Hamburg, Bremen und Lübeck einerseits, oder die Regierung der Vereinigten Staaten andererseits ihre Absicht, ihn zu endigen, der andern angekündigt haben wird; indem jeder der contrahirenden Theile sich gegen den andern die Befugniß vorbehält, am Ende der bestimmten Frist von zwölf Jahren eine solche Erklärung abzugeben. Es ist dabei zwischen ihnen verabredet, daß mit dem Ablaufe der zwölf Monate, nachdem eine solche Erklärung des einen Theils bei dem andern eingegangen, dieser Vertrag und alle seine Bestimmungen in Bezug auf die Staaten, welche diese Erklärung abgegeben und erhalten haben, ihre verbindliche Kraft verlieren sollen, welches verabredetermaßen so zu verstehen, daß wenn einer oder mehrere der genannten Hanseatischen Freistaaten bei Ablauf der zwölf Jahre vom Tage der Ratification die Erklärung über das Aufhören dieses Vertrages

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Republicks or Republick, which may not have given or received such notice.

ARTICLE III.

This Convention is concluded subject to the ratification of the President of the United States of America, by and with the advice and consent of the Senate thereof, —and by the Senates of the Free and Hanseatic Republicks of Hamburg, Bremen and Lubeck; and the ratifications shall be exchanged at Washington within twelve months, from the date hereof, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the above articles, as well in German as in English, and have thereto affixed their seals.

Done, in quadruplicate, at the City of Washington, on the thirtieth day of April A.D. one thousand eight hundred and fifty two, in the seventy sixth year of the Independence of the United States of America.

[Seal] DAN[1] WEBSTER
[Seal] A. SCHUMACHER

abgeben oder erhalten sollte, derselbe dessen ungeachtet in voller Kraft und Wirkung in Bezug auf diejenigen oder denjenigen der Hanseatischen Freistaaten bleiben soll, welche eine solche Erklärung weder abgegeben noch erhalten haben.

ARTIKEL III.

Gegenwärtiger Vertrag ist abgeschlossen worden vorbehaltlich der Ratification der Senate der Hanseatischen Freistaaten Hamburg, Bremen und Lübeck und vorbehaltlich der Ratification des Präsidenten der Vereinigten Staaten von Nord-Amerika unter Beirath und Zustimmung des Senates; die Ratificationen sollen innerhalb zwölf Monaten vom heutigen Tage an gerechnet, oder früher, wenn es geschehen kann, in Washington ausgewechselt werden.

Urkundlich dessen haben die beiderseitigen Bevollmächtigten obenstehende Artikel sowohl in deutscher als englischer Sprache unterzeichnet und ihre Siegel beigedrückt.

In vierfachen Exemplaren ausgefertigt in der Stadt Washington den dreißigsten April des Jahres Eintausend acht hundert und zwei und fünfzig und im sechs und siebenzigsten Jahre der Unabhängigkeit der Vereinigten Staaten von Nord Amerika.

A. SCHUMACHER [Seal]
DAN[1] WEBSTER [Seal]

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NOTES

In the final clause of the convention it is said that it was done "in quadruplicate". One original is in the treaty file, in which the English version is written in the left columns and the German in the right; bound with the instrument in the customary form are the duplicate United States instrument of ratification of September 24, 1852, and the original proclamation of June 6, 1853. Among the other papers in the file are the attested Senate resolution of August 30, 1852 (see Executive Journal, VIII, 450), and three examples of the certificate of the exchange of ratifications, dated February 25, 1853, and written in English only.

The three instruments of ratification on the part of the Hanseatic Republics are each written in German and include the text of the convention in both languages, with the English in the left columns in the instruments of Hamburg and Lübeck and in the right columns in that of Bremen. The dates are respectively November 24, 1852, for Lübeck; December 17, 1852, for Hamburg; and January 5, 1853, for Bremen.

In the treaty file are four original full powers, namely, those given to Albert Schumacher, consul general of Hamburg and Bremen in the United States, dated May 8, 1850, for Hamburg; May 11, 1850, for Lübeck; and May 13, 1850, for Bremen; and that given to Secretary of State Webster, dated April 27, 1852, three days before the signature of the convention.

It will be observed that the convention was by Article 2 very specifically made several as to each of the three Hanseatic Republics.

Accompanying the convention when it was submitted to the Senate with the presidential message of May 1, 1852, was a copy of a note of Schumacher dated January 16, 1851, which is quoted below (see Executive Journal, VIII, 385–86; also Senate Confidential Document No. 15, 32d Congress, 1st session, Regular Confidential Documents, XXIX, 271–76).

The Negotiations

Article 1, the substantive article of the convention, is similar to the second paragraph of Article 4 of the convention with Austria of May 8, 1848 (Document 132), and to like clauses of other earlier treaties of the United States.

On June 14, 1850, Albert Schumacher, consul general of Hamburg and Bremen in the United States, wrote from Baltimore to Secretary of State Clayton in these terms (original in the treaty file):

> The Undersigned, Consul General of the Free and Hanseatic Cities of Hamburg and Bremen has been instructed by the Senates of these Republics and also by the Senate of the Free and Hanseatic City of Lubeck, to represent to the Honble J. M. Clayton, Secretary of State of the United States, that numerous complaints have been made by Hanseatic Shipowners, that their Consuls in the United States do not possess the right to sit as judges and arbitrators in such differences, as arise between the master and the crews of the vessels belonging to the nations, whose interests are committed to their charge, without the intervention of the local authorities, unless the conduct of the crews or of the cap-

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tains should disturb the order, or tranquillity of the country. This right has been mutually accorded in the several treaties [1] concluded by the United States with their Majesties the Kings of Prussia and of Hannover, His Serene Highness the Grand duke of Mecklenburg Schwerin, and lastly in the convention with His Majesty the Emperor of Austria, ratified by His Excellency the president of the United States on the 15th of February a.c. It is therefore hoped that the Government of the United States in that true spirit of mutual accomodation, which has always characterized their relations, will not hesitate to grant to the Consuls of the three Hanseatic Republics, so closely allied to them by numerous ties of commercial interest, the same privileges, which they have freely accorded to their neighbouring States of Germany.

The Governments of the Hanseatic Republics have entire confidence in the wisdom and impartiality of the ordinary tribunals of the United States, and if they desire nevertheless to substitute their Consuls as judges or arbitrators in certain cases, it is mainly to avoid the delays and embarrassments occasioned by frivolous complaints, made on the part of disaffected crews, which would for a great part be prevented, or settled without difficulty, if the Consuls had jurisdiction in such cases. These complaints are often incited by unprincipled third parties, and are preferred by the sailors, to compel their captain, to comply with their desires, to leave the ship, in violation of their contracts, or to accede to other unreasonable demands, which they know he will do under existing circumstances, rather than seek redress, or be drawn before a foreign court of justice, where the proceedings are necessarily more protracted by the litigants not speaking the language of the country, and where such detention might cause a serious loss to the owners of his vessel.

A supplement to the treaty [2] concluded between the United States and the Hanseatic Cities on the 20th of December 1827 containing the same provisions, as are embodied in art. 4 of the late Convention with Austria, cited before, would subserve all the purposes sought to be attained.

The Undersigned is furnished with the proper credentials of authority, to act as plenipotentiary for the three Hanseatic Cities, and he requests, that His Excellency the president of the United States may also be pleased to appoint a plenipotentiary on their part, in order to accomplish an object much desired by the Governments of Hamburg, Lubeck and Bremen, and by their commercial communities, and which the Undersigned believes to be also manifestly for the interest of the United States, whose Consuls and Agents in the three Republics would be invested with the same judicial powers, as are desired for the Consuls, Vice-Consuls and Agents of those Republics in this Country.

The Undersigned holds himself in readiness to repair to Washington at any time, which may be fixed upon for this object, and avails himself of this opportunity to assure the Honble Mr Clayton of his high consideration.

The negotiation then proposed was declined. In the answering note of Clayton of June 20, 1850, is this paragraph (D.S., 6 Notes to German States, 256):

The proposition you have made has been submitted to the President and has received due consideration and I am directed by him to inform you, in reply that, as there is a probability that the Government of the United States will shortly revise and probably change their reciprocity Treaties with the States of the North of Europe, he does not think it expedient, and therefore declines, at present, to enter into any negotiations upon the subject

The proposal was renewed by Schumacher to Secretary of State Webster under date of January 16, 1851, also from Baltimore, in these terms (original in the treaty file):

The Undersigned has received instructions from the Senates of the republics he has the honor of representing, and also from the Senate of the free and hanseatic

[1] Respectively Documents 62, 92, 128, and 132.
[2] Document 59.

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City of Lubeck, to submit to the Secretary of State their desire, that the jurisdiction of their Consuls may be extended in certain cases by treaty stipulation.

The same causes which have induced the embodiment of a provision to that effect (a copy of which is added) in the several treaties concluded by the United States with other German Governments, render it also desirable for the hanseatic Cities. It is intended to prevent the interference of the local authorities in differences between Captains of hanseatic vessels and their crews, frequently instigated by third parties, to subserve their own sinister ends, and in violation of the shipping articles, by which the men expressly renounce the right of seeking redress, except before the tribunals of the Country, under whose flag they have enrolled themselves.

The Undersigned hopes, that the Government of the United States will freely concede to the Consuls of the Hansetowns the participation in a privilege, now enjoyed by the Consuls of Prussia, Austria, Hannover and other german States, and which would in return be also accorded to the Consuls of the United States residing at Hamburg, Bremen and Lubeck.

The Undersigned will hold himself in readiness to repair to Washington, when informed that His Excellency the President has been pleased to appoint a Commissioner to carry out the object in view, and he avails himself of the present occasion to assure the Honble Daniel Webster of his distinguished regard.

The enclosure to the foregoing note may have been either of two drafts of Article 1 of the convention which are now in the treaty file, not materially different except that one is written in English only and the other in both languages.

There is no answer of record to the note of Schumacher of January 16, 1851, although there is in the treaty file an incomplete draft of an answer dated January 23. Nothing further appears until the signing of the convention some fifteen months later except an undated English draft of the entire instrument (D.S., 2 Drafts of Treaties, 239–53).

Earlier agreements with the Hanseatic Republics were the Convention of Friendship, Commerce, and Navigation of December 20, 1827 (Document 59), and the additional article thereto of June 4, 1828 (Document 63).

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VENEZUELA : MAY 1, 1852

Convention for the Settlement of the Cases of the Schooner "Economy", the Schooner "Ben Alam", and the Vessels "San José", "Carlota", and "Gertrudis" (the last three being the "Constancia Claims"), signed at Caracas May 1, 1852. Original in English and Spanish. Not subject to ratification by the United States. As to ratification by Venezuela, see the editorial notes. Not proclaimed.

Convention upon the claims relative to the Schooner "Economy", the Schooner[1] "Ben Allen" and cargo and the vessels "San José", la "Carlota" and "La Gertrudis" and their Cargoes.

The undersigned Isaac Nevett Steele, Chargé d'Affaires of the United States of America and Joaquin Herrera, Secretary of State of the Department of Foreign Affairs of the Government of Venezuela, being duly authorized to form an equitable agreement for the payment of the twenty eight and a half per cent which corresponds to Venezuela in the indemnification claimed by those interested in the American Schooner "Economy" confiscated in Maracaybo in the year 1827, the American Schooner "Ben Allen" and her cargo also confiscated in Panama in the year 1827, and in the vessels "San José" "la Carlota" and "la Gertrudis" and their cargoes, prizes of the privateer "la Constancia" and her

Convencion sobre los reclamos relativos á la Goleta "Economy" la Goleta[1] "Ben Allen" y su cargamento y los buques "San José" "la Carlota y "la Gertrudis" y sus cargamentos.

Los infraescritos Joaquin Herrera, Secretario de Estado del Despacho de Relaciones Exteriores de Venezuela, é Isaac Nevett Steele, Encargado de Negocios de los Estados Unidos de America, estando debidamente autorizados para celebrar un arreglo equitativo para el pago del veinte y ocho y medio por ciento que corresponde a Venezuela en la indemnificacion que reclaman los interesados en la Goleta Norte Americana "Economy" confiscada en Maracaybo en el año de 1827, la Goleta Norte Americana "Ben Allen y su cargamento tambien confiscados en Panama en el año de 1827, y los buques "San José" "la Carlota" y la "Gertrudis," y sus cargamentos, presas del Corsario "la Constan-

[1] Correctly *Ben Alam.*

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tender "la Joven Constancia", recaptured and sold by Commodore Joly of the Navy of Colombia in the years 1818 & 1819 have agreed upon the following Articles.

ARTICLE 1st

The Government of Venezuela obligates itself to pay to the Chargé d'Affaires of the United States with the previous approbation of the present Convention by the Congress of Venezuela, the sum of Ninety thousand dollars macuquinos ($90.000) with the interest stipulated in the second Article, which shall be distributed among the abovementioned claimants in the following manner: namely, to those interested in the Schooner "Economy" five thousand dollars ($5000), to those interested in the Schooner "Ben Allen" and cargo, twelve thousand dollars ($12.000.) and to those interested in the said prizes of the Constancia and her tender Seventy three thousand dollars ($73.000.)

ARTICLE 2nd

Said sum of ninety thousand dollars ($90.000.) shall be paid at the Treasury in six annual installments of fifteen thousand dollars ($15.000.) each. The first installment shall be paid on the thirty first day of December of the present year 1852, and of the remaining five installments, one shall be paid on the thirty first

cia" y su mosca la "Joven Constancia" recapturadas y vendidas por el Comandante Joly, de la marina de Colombia en los años de 1818 y 1819, han convenido en los articulos siguientes

ARTICULO 1°

El Gobierno de Venezuela se obliga a pagar á la orden del Señor Encargado de Negocios de los Estados Unidos previa la aprobacion del presente convenio por el Congreso Venezolano, la cantidad de Noventa mil pesos macuquinos ($90.000) con los intereses estipulados en el segundo articulo, que se distribuirá entre los reclamantes susodichos del modo siguiente, á saber; á los interesados en la Goleta "Economy" Cinco mil pesos ($5000) á los interesados en la Goleta "Ben Allen" y su cargamento, doce mil pesos ($12.000) y á los interesados en las dichas presas de la Constancia y su mosca Setenta y tres mil pesos ($73.000).

ARTICULO 2do

Dicha suma de Noventa mil pesos ($90.000) se pagará por Tesoreria en seis exhibos anuales de quince mil pesos ($15000.) cada uno El primer exhibo se pagará el treinta y uno de Diciembre del año actual de 1852, y de los cinco exhibos restantes uno se pagará el treinta y uno de Diciembre en cada uno

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day of December in each of the years 1853, 1854, 1855, 1856 and 1857; and at the time of the payment of each installment there shall also be paid the interest upon said installment, which shall be computed at the rate of three per centum per annum from the date of this Convention up to the said time of payment.

de los años de 1853, 1854, 1855, 1856 y 1857, y al tiempo del pago de cada exhibo se pagará tambien el interes sobre dicho exhibo, que se computará á razon de tres por ciento al año desde la fecha de este Convenio hasta dicho tiempo del pago

ARTICLE 3rd

By the fulfillment of the stipulations in the preceeding articles, all damages, prejudices, losses and interests, which the persons interested in the Schooner "Economy" the Schooner "Ben Allen" and her cargo, and the said prizes of the "Constancia" and her tender and their cargoes, have claimed or may pretend to claim hereafter of Venezuela, shall remain completely and absolutely indemnified.

In testimony whereof the undersigned have signed two Conventions of the same tenor in Caracas on the first day of May One thousand eight hundred and fifty two.

I. NEVETT STEELE.
JOAQn HERRERA.

ARTICULO 3º

Con el cumplimiento de lo estipulado en los articulos precedentes, quedarán completa y absolutamente indemnizados todos los daños y perjuicios, perdidas é intereses que han reclamado ó pretendan reclamar en lo sucesivo á Venezuela las personas interesadas en la Goleta "Economy" la Goleta "Ben Allen" y su cargamento, y las dichas presas de la Constancia y su mosca y sus cargamentos.

En fe de lo cual los infraescritos han firmados dos de un tenor en Caracas á primero de Mayo de Mil ocho Cientos Cincuenta y dos.

JOAQn HERRERA
I. NEVETT STEELE

NOTES

The source of the text of this convention printed above is a copy, in English and Spanish, certified under date of September 10, 1853, by Isaac Nevett Steele, Chargé d'Affaires to Venezuela, who signed the agreement on the part of the United States, to be "a true copy of the original Convention" (D.S., Colombian Claims, folder *La Constancia*). From the final clause thereof it appears that "two Conventions of

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the same tenor" were signed; but no original document is now available. Besides that mentioned above, there are other copies of the agreement in the archives of the Department of State, namely: (*a*) a copy in English and Spanish, uncertified, which is with Steele's despatch of May 8, 1852 (D.S., 9 Despatches, Venezuela, No. 26); (*b*) a copy in English and Spanish, certified under date of April 27, 1866, by Secretary of State Seward, as a true copy "from the original on file in this Department" (D.S., Colombian Claims, folder *Ben Alam*), but which appears to be a copy of the copy enclosed with Steele's despatch of May 8, 1852; and (*c*) a copy in English and Spanish, certified under date of December 20, 1890, by Richard M. Bartleman, Secretary of Legation at Caracas, to be "a true and exact copy, in every particular, of the Convention of May 1st 1852. on file in this office", which is with the despatch of William L. Scruggs, Minister to Venezuela, of December 27, 1890 (D.S., 40 Despatches, Venezuela, No. 179). The papers in the treaty file are a typewritten copy of the last-mentioned copy and a print of the convention in English and Spanish.

The Full Powers

While the convention does not mention full powers, but states simply that the negotiators were "duly authorized", Steele had a full power under date of January 4, 1850, authorizing him "to agree, treat consult and negotiate of and concerning claims of citizens of the United States on the Government of Venezuela" (D.S., 3 Credences, 330). No record or mention has been found of the full power of the Plenipotentiary of Venezuela.

The Negotiations

Under date of January 5, 1850, Isaac Nevett Steele, who had been appointed Chargé d'Affaires to Venezuela on December 6, 1849, was instructed to negotiate a general convention for the settlement of claims against the Government of Venezuela and was given the full power above mentioned for that purpose. The relevant portion of those instructions reads as follows (D.S., 1 Instructions, Venezuela, 82–85):

> I transmit a Full Power, authorizing you to conclude with the Venezuelan Government a Convention for the adjustment of claims of citizens of the United States upon that government. Such of those claims as have been heretofore adjusted, were settled by means of an informal arrangement between the Chargé d'Affaires of the United States and the Minister for Foreign Affairs of Venezuela. The advantages of this course are, the saving of the time which would be consumed in the execution of a regular Convention and of the expense to this government in providing a tribunal for auditing the claims and distributing the amount paid by that government among the parties interested. Whilst, however, the claimants whose cases may thus be disposed of have every reason to prefer this mode for their adjustment, the parties interested in pending claims, are dissatisfied with the delay which it occasions in the settlement of their demands. Under these circumstances, and taking into view, also, that many of the claims are of very old date, it is deemed advisable to propose to that government a Convention of the character referred to. This may stipulate for a sum payable by instalments in discharge of all the claims, to be distributed by this govern-

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ment among the aggrieved parties. A copy of the Convention with the Mexican Republic of the 11th of April, 1839 [Document 89], and of that with Peru of the 17th of March, 1841 [Document 97], upon similar subjects, are herewith transmitted for your information. The Venezuelan government will be expected to pay the instalments with the interest thereon, in gold or silver money, say at the City of La Guayra, to the order of this government. The interest on the instalments should not be less than at the rate of six per cent per annum. In regard to the principal to be demanded in the satisfaction of the claims, as most of the proof relating to them is on file in the Legation, the Department has no means of ascertaining the whole amount claimed. As it is possible however, that upon proper examination, some of the claims and the amount of reparation expected in others, would not be allowed, making an estimate of the whole amount claimed, you may offer to accept from that government such reasonable abatement thereof, as, under the circumstances, would, in your judgment, ensure substantial justice in the meritorious cases. The period for the final payment should not be extended beyond ten years, and you will endeavor to make it still shorter.

In accordance with the foregoing instructions, Steele addressed a note to the Minister of Foreign Affairs of Venezuela under date of March 5, 1850, proposing the negotiation of "a Convention, which shall dispose of *all* the pending claims" of citizens of the United States on that Government (D.S., 8 Despatches, Venezuela, No. 3, March 19, 1850, enclosure G). The reply of the Government of Venezuela, which was delayed until November 4, 1850, was a refusal of the proposal (*ibid.*, No. 12, November 20, 1850, and enclosures 3 and 4).

Meanwhile, on September 23, 1850, claims against the former Republic of Colombia were mentioned in the Senate (Congressional Globe, XIX, pt. 2, 1933); and the sum of $2,000 was included in the appropriation act of September 30, 1850, for the purpose of defraying "the expenses of a special agent to the three republics of Venezuela, New Granada, and Ecuador, to claim of those governments respectively the several amounts due from each of them on claims of citizens of the United States against the former republic of Colombia" (9 Statutes at Large, 536).

An instruction of April 8, 1851 (D.S., 1 Instructions, Venezuela, 93), written after receipt of Steele's despatch of November 20, 1850, and after passage of the appropriation act above cited, enclosed a note addressed by Secretary of State Webster to the Minister of Foreign Affairs of Venezuela under date of March 22, 1851, one paragraph of which reads as follows (D.S., 2 Communications to Foreign Sovereigns and States, 155–57):

> The Undersigned will therefore inform the Venezuelan Minister for Foreign Affairs that the forbearance of this government in regard to the claims on Colombia, for which Venezuela is accountable, has been severely tried. If those claims shall not be more promptly adjusted this government will consider the residence of a Chargé d'Affaires of the United States at Caracas as useless, will be compelled to suspend diplomatic relations with the Venezuelan Government, and adopt such further measures as its own dignity and justice to citizens of the United States may be deemed to call for.

Steele wrote under date of June 9, 1851 (D.S., 8 Despatches, Venezuela, No. 18), of the "salutary effect" of that note and stated that the Venezuelan Minister of Foreign Affairs "has submitted to

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the consideration of his Government the terms of settlement proposed by me, and promises to hand me in two or three days, the draft of such a Convention as his Government would be willing to sanction". But nearly a year elapsed before the negotiations were concluded.

On May 12, 1851, Steele had presented to the Minister of Foreign Affairs of Venezuela a partial list of the claims of the United States, which included the cases of the *Economy*, the *Ben Alam*, the *San José*, the *Carlota*, the *Gertrudis*, the *Good Return*, the *Medea*, that of Jacob Idler, that of Oliver Taylor, that of Hollins and McBlair, and that of John Donnell & Sons (D.S., Legation Archives, Venezuela, Communications to the Government of Venezuela, 1850–66). Another list, presented by Steele on July 3, 1851, omitted the last four cases above mentioned (D.S., 8 Despatches, Venezuela, No. 22, November 25, 1851, enclosure 6); and the convention as signed on May 1, 1852, dealt only with the cases of the *Economy*, the *Ben Alam*, the *San José*, the *Carlota*, and the *Gertrudis*.

The events from which the claims settled by this convention arose, occurred during the regime of the former Republic of Colombia, Venezuela's proportionate share of the indemnities being 28½ percent, as stipulated in the convention between New Granada and Venezuela of December 23, 1834, to which Ecuador later adhered.

The Schooner "Economy"

The facts in the case of the schooner *Economy* are thus set forth in the instruction of Secretary of State Forsyth under date of January 9, 1838, to James Semple, Chargé d'Affaires at Bogotá (D.S., 15 Instructions, Colombia, 42–51):

> This vessel, Peter Bousquet owner, arrived at Maracaibo on the 29th of October, 1827 and discharged her cargo. Before taking her return cargo on board, she was examined by the Custom House officers, who discovered twenty or thirty pounds of tobacco in the seamen's chests in the forecastle, which, it is alleged, was destined for their own use, and about as much more in the cabin belonging to the mate and intended for his use. The vessel was seized and condemned upon the ground that the tobacco formed a part of her cargo and that it was imported contrary to the laws of Colombia. The amount claimed in this case is $7000. It does not appear from the accompanying documentary proof that there was any attempt made to land or dispose of any part of this tobacco. The only question involved in the case therefore, is, whether the quantity of that article found in the vessel was so great as necessarily to lead to the inference that it was ever intended to be landed or disposed of in Colombia. From the well known addiction of our mariners to the use of tobacco and their practice of laying in a supply of the commodity for their own consumption when bound on a foreign voyage, there can be no reasonable doubt that the tobacco on board the Economy was fairly intended to be consumed exclusively by her officers and crew, and that consequently the condemnation of that vessel was unjust.

The Schooner "Ben Alam"

The facts in the case of the schooner *Ben Alam* (called *Ben Allen* in this convention, but named *Ben Alam* in her certificate of registry and other early papers) are stated as follows (D.S., Colombian Claims, folder *Ben Alam*, paper signed "W S. Cox" and endorsed "Notes of Claimant's Counsel" and "Recd Sep 27, 1861"):

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The schooner Ben Alam, owned by David & Henry Cotheal of New York, under command of James L. Roberts, sailed from New York in September, 1827, for St Andres and the Mosquito coast. She procured a proper license, at St Andres, to trade on the coast, arrived off Chagres on the 11th of October and obtained permission to sell part of her cargo without entering port. Part of the cargo, principally flour, was sold, the duties paid and a clearance procured. The Captain had agreed with certain parties to supply him with ballast to supply the place of the cargo taken out and was only awaiting its arrival, in order to set sail. Towards 9 o'clock at night, the vessel was boarded & seized by an officer from the shore, several seamen lashed together & the vessel worked into the harbour. The Captain & other officers were thrown into prison and detained there 26 days.

There was no formal libel of the vessel or cargo in any Admiralty Court. The officer who seized the vessel made a report of his capture to the Collector of Customs, charging the officers of the vessel with intending to defraud the revenue laws. This was passed over to the Collector of the Tobacco Department, to *perform the competent summary* and the latter, on the 13th of October, proceeded to take the depositions of certain persons engaged in making the arrest. This was done in the absence of the officers & crew of the vessel, who were in prison, and without any citation, monition or summons, of any sort—without even their knowledge, of the charges against them. After taking the depositions, the officer went to the castle where the prisoners were confined, as he states, *to take the confessions* of the *culprits*, under arrest. He took the unsworn statements of the Captain, supercargo and certain parties from the shore charged with aiding in violating the revenue laws and the statement of one John More. These proceedings being closed, they were remitted to the Admõr General, "to do as he thinks proper", the goods of the *culprits* meanwhile being sequestrated.

On the 29th of October, one Soto, a Notary Public, acting for the Escribano de la Renta, who was sick, received the aforegoing proceedings or summary *at Panama*, and went, with it to the Judge of the Hacienda (Exchequer) of the Province.

On the 3rd of November, Don Pedro Ximenes, pronounced a decree confiscating the vessel & the tobacco and directing the other effects to be delivered to the owners.

In fact, they never were delivered.

The Captain & Supercargo arrived at Panama some days after this decree of confiscation was pronounced, having heard vaguely that some proceeding was going at Panama and having been released after repeated solicitations and refusals. They heard, at Panama, that they were condemned to six years of labor on the public works and were ordered not to leave Panama, but they escaped.

The "Constancia" Claims

The facts in the case of the *Constancia* claims are thus briefly stated (D.S., Colombian Claims, folder *La Constancia*, paper dated March 6, 1862, signed by "E W Leavenworth Com^{r} on the part of the U. States", and endorsed "Com^{rs} Brief"):

The La Constantia was a Privateer owned by Adam Pond & W^{m} R Mason, Citizens of the U. States.

She sailed under a commission granted in the year 1818 to said Pond by José Artigas the Chief of the Banda Oriental.

In the latter part of that year she took three prizes, the San José—the La Carlota & the Gertrudis.

They were all taken from her possession by Com: Joly, Commander of the Squadron of Venezuela, on the ground that the La Constantia was a Pirate & had been condemned as such in one of the Dutch Islands.

The Courts of Venezuela *assumed* jurisdiction, & condemned the vessels *on proofs to be thereafter furnished* by Com: Joly within a year & a day.

The vessels—one of them—& the *three* cargoes were sold for $92,747 & the proceeds distributed by the Court at Margarita for the use & benefit of Venezuela.

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The Settlement

With his despatch of May 8, 1852 (D.S., 9 Despatches, Venezuela, No. 26), enclosing a copy of this convention, Steele transmitted a statement showing the amount, both in Venezuelan currency and in that of the United States, of the 28½ percent to be paid by Venezuela in each case under the convention, and also the total amount in each case according to this settlement. That statement reads as follows:

Statement A.

"Economy."

Amt of 28½ pr Cent agreed to be paid by Venezuela	$5,000	Ven. Curr·
	$3.713	U.S. do.
Estimatd value of the whole claim according to the settlemt with Venezuela	$17,543 85	Ven. Curr
	$13.030	U.S. do.

"Ben Allen"

Amt of 28½ pr Cent agreed to be paid by Venezuela	$12,000	Ven. Curr.
	$8.930	US. do.
Estimated value of whole claim accordd to settlemt with Venezla	$42,105	Ven. Curr
	$31.335	U.S do.

"Constancia"

Amt of 28½ pr Ct agreed to be paid by Venezuela	$73,000	Ven. Curr
	$54 327 50	U.S. do.
Estimated value of whole claim according to settlemt with Ven.	$256,140	Ven. Curr
	$190.622	U.S. do.

May 1st 1852.

Regarding the settlement, Steele, in his despatch of May 8, 1852, above cited, wrote as follows:

> The sums agreed to be paid on account of the two first [the cases of the *Economy* and the *Ben Alam*] are nearly equivalent to 28½ per Cent of the actual loss proved, with interest at five per Cent per annum from the year 1827, at which time the Vessels were confiscated. In the case of the "Constancia", I have encountered greater difficulty in its adjustment, and the sum which I have consented to receive in payment is about equal to 28½ per Cent of the loss, fairly estimated according to the proofs, with interest at the rate of three per cent from 1818, in which year the vessels named above [the *San José*, the *Carlota*, and the *Gertrudis*] were seized and sold. . . .
>
> I have found it absolutely impossible to settle these claims without giving a long credit, and I have therefore agreed that they shall be paid in six annual installments, such an arrangement being *within* the limit assigned to me by my instructions in Despatch Nº 2. from the Department. The rate of interest to be paid on the installments is only three per cent, and I have been induced to consent to it, as well by the belief that without the actual presence of an American Naval Force on the Venezuelan Coasts, better terms could not now be procured, as by an unwillingness to forego the present settlement of the claims for the doubtful chance of obtaining a better rate of interest hereafter. Upon the whole, while I have conceded as much as could properly be considered due to the many doubts and objections of greater or less weight, which have been so long urged by this Government against these claims, I yet consider the adjustment now made, as one which does justice to the claimants, and with which they should therefore be entirely satisfied. It is the best which I have been able to make, after an amount of incessant and worrying negotiation, for the last twelve months, of which I can give you no adequate idea without entering into details which would

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be out of place in this communication. It may be proper to add that, in the agreement which I have signed, I have adopted, with some unimportant changes, the form which seems to have been used by my predecessors.

The claims now adjusted together with those of the "Good Return" and "Medea" constitute the "claims on Colombia" to which the note addressed by you to the Venezuelan Minister of Foreign Affairs made special reference, and which were I presume in the view of Congress, when it made an appropriation for the expenses of a special Agent for claims to the Republics of Venezuela, New Granada and Ecuador. I have therefore deemed it proper to direct my efforts particularly to the settlement of these claims.

This settlement is referred to in the annual message of President Fillmore of December 6, 1852, as follows (Richardson, V, 166):

I have the satisfaction to inform you that the executive government of Venezuela has acknowledged some claims of citizens of the United States which have for many years past been urged by our chargé d'affaires at Caracas. It is hoped that the same sense of justice will actuate the Congress of that Republic in providing the means for their payment.

Execution of the Convention

The total indemnification of $90,000 stipulated in the convention was payable, in *macuquino* dollars, in six annual instalments commencing on December 31, 1852, with interest at 3 percent on each instalment from the date of the convention (May 1, 1852) to the date of payment.

It was not until May 1853 that the convention was approved by the Congress of Venezuela (D.S., 9 Despatches, Venezuela, No. 43, May 9, 1853); the decree of approval, of May 12, 1853, including the Spanish version of the convention, is printed in Recopilacion de leyes y decretos de Venezuela, III, 141–42.

The first instalment, amounting with interest to $15,675 Venezuelan currency and to $11,665.10 United States currency, was paid in October 1853, one half in cash and the other half in bills due December 6, 1853 (D.S., 9 Despatches, Venezuela, No. 56, October 15, 1853). Thereafter payments were made at irregular intervals, and the record thereof is not entirely clear. The second, third, and fourth instalments, with interest, were paid, one half of each at a time, between 1855 and 1859 (D.S., 10 Despatches, Venezuela, No. 15, November 15, 1855; No. 18, February 15, 1856; No. 32, January 21, 1857; No. 34, February 18, 1857; No. 37, April 23, 1857; and 12 *ibid.*, No. 13, April 12, 1859). In a schedule of claims of the United States which he enclosed with a note to the Government of Venezuela of November 15, 1862, Erastus D. Culver, then Minister Resident at Caracas, stated that two of the six instalments specified in this convention, amounting, with interest from the date of the convention to November 22, 1862, to $39,503.25 Venezuelan currency, still remained unpaid (D.S., Legation Archives, Venezuela, Communications to the Government of Venezuela, 1850–66). On December 2, 1862, Culver received from the Government of Venezuela the sum of $100,000 Venezuelan currency on account of claims of the United States (exclusive of the Aves Island claims but including those settled by this convention of 1852),

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which were then stated to total $110,892.49. (A copy of Culver's receipt to the Government of Venezuela for this payment and also the original receipts of the representatives of the claimants for their respective portions thereof, are in D.S., Legation Archives, Venezuela, miscellaneous unbound papers, 1860–69; see also D.S., 13 Despatches, Venezuela, No. 6, December 16, 1862.) In another schedule of claims, which he submitted to the Minister of Foreign Affairs with a note of November 14, 1864, Culver stated that there then remained due on the claims settled by this convention of 1852 the sum of $3,882.42, with interest from November 22, 1862 (D.S., Legation Archives, Venezuela, Communications to the Government of Venezuela, 1850–66). This balance was finally adjusted in April 1891 by payment by Venezuela of 7,000 pesos, including interest, or $5,303.03 United States currency (D.S., 41 Despatches, Venezuela, No. 205, April 13, 1891); and on May 23, 1891, William L. Scruggs, Minister to Venezuela, transmitted to the Secretary of State a draft for the latter sum "in full discharge of the obligation" (*ibid.*, No. 217).

Claims against New Granada and Ecuador

Various efforts were made to effect a settlement with New Granada and Ecuador of their proportionate shares of the indemnification for the claims dealt with by this convention with Venezuela, but these met with no success (D.S., Despatches, Colombia, and Despatches, Ecuador, *passim*).

The claims finally came before the Commission under the convention with New Granada of September 10, 1857. The Commission disallowed the *Economy* claim; the claim in the case of the *Ben Alam* was left undecided at the expiration of the Commission; and for the *Constancia* claims the umpire awarded the sum of $146,508.50, including interest (Moore, International Arbitrations, II, 1392–94, cases 98, 81, and 80). The last-mentioned decision was one of the so-called "umpire cases", which were decided by the umpire on March 9, 1862, the eve of the close of the Commission. The awards in the "umpire cases" were protested by the Commissioner of New Granada on the ground that he had not been heard on the merits thereof; diplomatic correspondence followed; and the Government of the United States, although maintaining the validity of the awards, reserved payment of them, and the payments made by Colombia were received as a "general credit upon the indebtedness" of that Government (*ibid.*, 1397–1407).

The "umpire cases", with one exception (not here material), came before the Commission under the convention with Colombia of February 10, 1864, and were heard *de novo*. The *Constancia* claims were referred, the Commissioners having differed in opinion, to the umpire, Sir Frederick W. A. Bruce, British Minister at Washington, who, following the decision in similar cases under the convention with Ecuador referred to below, adjudged the claims not valid (see *ibid.*, 1407–10; and for opinions written in the various cases, see *ibid.*, III, 2729–51).

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In the case of the *Ben Alam*, which was left undecided by the previous Commission, the following award was made (*ibid.*, 1420):

> The commissioners award the sum of $5,559.50, with interest at 5 per cent from the 10th day of September 1857, as an equitable compromise, as advised by the umpire and without any consideration as to the question of principle involved.

The case of the *Economy*, having been decided by the former Commission, did not come before the Commission under the convention of 1864.

In the meantime claims in all the cases had been presented to the Commission under the convention with Ecuador of November 25, 1862, which awarded $6,127.50 Ecuadoran currency in the case of the *Economy* and $11,713.20 Ecuadoran currency in the case of the *Ben Alam*, but rejected the *Constancia* claims (*ibid.*, 1576, cases 6, 9, and 10).

Thus the *Economy* claim was admitted by Venezuela, disallowed as against New Granada, and adjudged as against Ecuador; the *Ben Alam* claim was admitted by Venezuela and adjudged as against the other two Governments; and the *Constancia* claims were admitted by Venezuela and finally disallowed as against the other two Governments.

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NETHERLANDS (BATAVIAN REPUBLIC)
DECEMBER 7 AND 12, 1799

Settlement of the Case of the Schooner "Wilmington Packet". Note of Maarten van der Goes, Minister of Foreign Relations of the Batavian Republic, to William Vans Murray, Minister Resident of the United States, dated at The Hague December 7, 1799, in French. Answering note of the Minister Resident, dated at The Hague December 12, 1799, in English.
Not subject to ratification. Not proclaimed.

[*The Minister of Foreign Relations of the Batavian Republic to the Minister Resident of the United States*]

[Translation]

N° 7.

Egalité Liberté

LA HAYE *ce 7 Decembre 1799*
l'an 5 de la Republique Batave

Le MINISTRE DES RELATIONS EXTERIEURES de la Republique Batave à MONSIEUR MURRAY Ministre Resident des Etats Unis d'Amerique pres la Republique Batave

MONSIEUR, Vous vous attachéz dans une lettre [1] du 3 Courant à exprimer votre étonnement des lenteurs qu'eprouve la conclusion finale de l'affaire du Wilmington Packet; Mais Monsieur, ces lenteurs auront lieu, ou plutôt l'arrangement finale restera necessairement en arriere tant que nous ne serons d'accord sur le principal. Un arrêté du

No. 7

Equality Liberty

THE HAGUE, *this December 7, 1799, year 5 of the Batavian Republic.*

The MINISTER OF FOREIGN RELATIONS of the Batavian Republic to Mr. MURRAY, Minister Resident of the United States of America near the Batavian Republic.

SIR: You take pains in a letter [1] of the 3d instant to express your astonishment at the delays encountered in the final conclusion of the affair of the *Wilmington Packet;* but, Sir, those delays will occur, or rather, the final arrangement will necessarily remain behindhand, as long as we do not agree on the main thing. An order of the

[1] Printed in the editorial notes.

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Directoire en date du 6 Novembre, 1799, m'autorise à traiter avec vous en prenant pour base de l'arrangement, le produit de la vente de la charge du Wilmington Packet, Sçavoir 15,000 Pezos de huit. Vous Monsieur, vous avez continué jusqu'ici, à demander cette somme en entier, pour dedommager les réclamans. Je passerois mes pouvoirs en y acquiescant; nous ne sommes donc d'accord que sur l'Intention. C'est une remarque qui sans doute n'echappera point au President des Etats Unis, auquel vous me communiquez d'avoir envoyé les piéces échangées entre nous à cette occasion.

Cette derniere circonstance m'a causé une sorte de satisfaction. Je me plais à croire que le President y verra, comme dans toute la transaction, des preuves trop marquées des veritables dispositions du Gouvernement Batave pour inferer aucune induction opposés de ces retards, auxquels vous vous montrez si sensible: Mais qu'independamment de la cause precitée, il réconnaitra inévitables, dans une multiplicité d'affairs majeures. Il sera sans doute aussi trop équitable pour jamais imputer au Gouvernement Batave, le tort que ces retards peuvent causser aux interessés, qui s'etant refusés par des motifs secrets à user de la voye d'appel que leur ouvrait la justice, n'ont

Directory dated November 6, 1799, authorizes me to treat with you, taking as a basis of the arrangement the proceeds of the sale of the cargo of the *Wilmington Packet*, that is to say, 15,000 pieces of eight. You, Sir, have continued until now to ask for this sum in its entirety, to compensate the claimants. I would be going beyond my powers if I acquiesced therein; we are, therefore, in agreement only regarding the intent. This is an observation which, doubtless, will not escape the President of the United States, to whom, you communicate to me, you have sent the documents exchanged between us in this connection.

This last circumstance has caused me a kind of satisfaction. I take pleasure in believing that the President will see therein, as in the whole transaction, proofs which are too evident of the true sentiments of the Batavian Government to infer any contrary deduction from those delays, to which you show yourself so sensitive, but which, independently of the cause mentioned above, he will recognize as inevitable in a multiplicity of most important matters. He will also, without doubt, be too equitable ever to impute to the Batavian Government the harm which those delays may cause to the interested persons, who, having refused, for unknown reasons,

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aucun droit de taxer notre Administration Judiciaire, ne pouront janais s'en prendre qu'à eux memes, et par consequent doivent s'estimer trop heureux de l'arrangement amical auquel le Directoire veut bien condescendre.

Je persiste donc, Monsieur, dans la note [1] que je vous ai addressée le 14 Novembre. Mais pour éviter des nouvelles discussions, je vous offre sur la base qui y a été posée, la somme de Vingt Mille Florins. Au cas que vous acceptiez cette somme, j'ai l'honneur de vous prévenir que mon gouvernement m'a prescrit de vous demander un acte de cession de tous les droits.

Agreez Monsieur! l'assurance de ma haute Consideration

Signé M. Van der Goes

Par le Ministre

signé Boscha

to avail themselves of the channel of appeal which the courts opened to them, have no right to tax our judicial administration, can never blame any one but themselves, and consequently ought to consider themselves most fortunate at the friendly arrangement to which the Directory is good enough to condescend.

I therefore maintain, Sir, the note [1] which I addressed to you on the 14th of November. But in order to avoid new discussions, I offer to you, on the basis therein laid down, the sum of 20,000 florins. In case you should accept this sum, I have the honor to advise you that my Government has ordered me to ask of you a document ceding all rights.

Accept, Sir, the assurance of my high consideration.

M. Van der Goes

By the Minister:

Boscha

[*The Minister Resident of the United States to the Minister of Foreign Relations of the Batavian Republic*]

The Hague *12. Dec. 1799 and of the Independence of the U.S. of America the 24th*

Citizen Minister. By your note of the 7th instant you offer to pay twenty thousand Florins as a final settlement of the case of the Wilmington Packet.

The interests of the Individuals concerned are so urgent that I accept your proposition, and am ready to give you a discharge from claims agreeably to your note.

Might I take the liberty of requesting that these F20000 be paid to Messrs Willinks Van Staphorsts & Hubbard Bankers Amsterdam.

[1] Printed in the editorial notes.

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Accept citizen Minister the assurance of the high consideration with which I have the honour to be

Y^{r} mos^{t} ob. sv^{t} &c &c W. V. MURRAY

Min. Res U.S. near the Batavian Republic

The Minister of Ecte^{r} Rel^{s} of the Batavian Republic

VAN DER GOES *&c &c &c*

NOTES

The source texts for the notes of December 7 and 12, 1799, are the copies which were enclosed with the despatch of William Vans Murray, Minister Resident at The Hague, of December 13, 1799 (D.S., 4 Despatches, Netherlands, No. 108); the note of Murray of December 12 is bound with the despatch cited; the note of Maarten van der Goes, Minister of Foreign Relations of the Batavian Republic, of December 7, is bound following despatch No. 106, of November 28, 1799, in the same volume.

The authority of Van der Goes was stated in his note of December 7; that of Murray was derived from his instructions; the agreement was completed by the notes exchanged, and no ratification on either part was requisite; the stipulated payment of 20,000 florins was made to the Amsterdam bankers of the United States, Willinks, Van Staphorsts & Hubbard, upon the giving of the following discharge by Murray, a copy of which was enclosed with his despatch of December 4, 1800, and which, he wrote, "was drawn up as you see it, by the Batavian government, whose guilders sound better than their English" (*ibid.*, No. 120, December 4, 1800, and enclosure):

20,000 Guilders Dutch Current

THE HAGUE *19. Jany 1800 &c &c*

The committee of the affairs of the Colonies & possessions of the Batavian Republic in America and on the coast of Guinea

Please to pay to Wilhem & John Willink Nicholas & Jacob Van Staphorst & Hubbard, Bankers of the US of America at Amsterdam, or their order the sum of Twenty thousand guilders Dutch current with which I the undersigned William Vans Murray Minister Resident of the United States of America near the Batavian Republic not only declare to be terminated the difference concerning the condemnation of the Cargo of the Vessel the Wilmington Packet in date the 30 Sep: 1793 by the Tribunal of St Martin; but also and especially for this sum in the name of and for the captured or those qualify'd to desist from all claim and demand for the restitution of the condemned cargo, and further from all claim right or demand of all actions and pretentions on account of suffered damages & loss of gain of whatever nature which the captured might pretend under pretence of the capture. All which rights & claims by these, for the said sum, is renounced to the above mentioned Committee without reserve, with promise to validate this renunciation in all times

signed W. V. MURRAY.

To the Committee of Affairs of the Colonies & possessions of the Batavian Republic in America & on the coast of Guinea.

Treaties of earlier date had dealt with claims of American citizens, providing for arbitration thereof (Articles 6 and 7 of the Jay Treaty with Great Britain of November 19, 1794, Document 16, which cover both British and American claims; Article 21 of the treaty with

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Spain of October 27, 1795, Document 18); but this agreement with the Netherlands (which would now be called an Executive agreement) is the first instance of a definitive settlement of a claim of an American citizen against a foreign government by diplomatic negotiation, fixing the amount; and it is the earliest precedent for the practice later settled and now undoubted, that submission of such agreements to the Senate is unnecessary.

The archives of the Department of State contain a file in the case of the *Wilmington Packet* (Netherlands Claims, envelope 2, folder 8; hereinafter referred to as "claims papers"; letters, etc., herein mentioned or quoted without specific citation are in the claims papers).

The "Wilmington Packet"

On July 24, 1793, the American schooner *Wilmington Packet*, of Charleston, South Carolina, 72$^{2}/_{5}$ tons, having a personnel of eight (and also, it appears, some French passengers), Moses Andrews, owner and master, sailed from Bordeaux with a cargo, chiefly wine, oil, and dry goods; her destination, according to the master's declaration and the clearance, was the island of St. Thomas, then Danish; the invoice of the cargo shows a total of over 139,000 francs value,[1] but the figures were, it seems, stated in paper assignats and not in coin.

War between France and the Netherlands had commenced during the previous February; the *Wilmington Packet* had cleared for Bordeaux from her home port, Charleston, on May 1.

On September 6, 1793, the *Wilmington Packet* was stopped near the islands of Nevis and St. Christopher (St. Kitts) by the private armed schooner *Elinda*, under the Netherlands flag, William Palmer, captain; the American schooner was taken first to Basseterre, a port of St. Kitts (then, as now, British), where Andrews made protest before a notary public (September 7, 1793; original in the claims papers), and thence (September 8) to the island of St. Martin.[2]

Following the proceedings had at St. Martin, the *Wilmington Packet* sailed on October 26 for St. Eustatius, where protest was made (October 28), and thence on October 31 for Charleston, where she arrived on November 19; there, on the next day, Andrews, with two other mariners of the schooner, made lengthy protest (the original, and also the print thereof in the City Gazette and Daily Advertiser, of Charleston, December 11, 1793, are in the claims papers).

The Proceedings in Prize

The first hearing before the prize tribunal of St. Martin was on September 11, 1793, and appears to have been somewhat informal. An offer was then made to Andrews to restore the vessel and cargo, if damages were waived; but that offer Andrews refused, and the cause went on to judgment.

The cargo was landed on September 14 and was found to be in no part contraband.

[1] Nominally about $28,000.

[2] This island, of about thirty-eight square miles, has been in part under French and in part under Netherlands sovereignty since the seventeenth century.

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Copies of the written pleadings (probably made up after the oral arguments) and other documents of the suit are among the claims papers; the claimant was Jean Baptiste François René de Bragelongne, owner of the Netherlands privateer; he offered formally (September 14) to restore the *Wilmington Packet*, with demurrage and costs, pending decision on the cargo; this was refused and trial demanded by the defendant.

The claimant counted that papers found on the *Wilmington Packet* showed the cargo to be of French ownership; that the actual destination of the schooner was not St. Thomas, as stated in the clearance, but Santo Domingo; that the defendant could not rely on the treaty [1] between the United States and the Netherlands of October 8, 1782 (*a*) for want of a sea letter and (*b*) because his manifest or invoice was not in due form; and that the defendant might have had a sea letter from Charleston, since a vessel arriving at St. Martin from North America in March 1793 had one. The defendant answered that the captor was a coast-guard or revenue vessel, to which a vessel taken near Nevis could not be adjudged prize; that the statements of the claimant as to ownership of the cargo and destination were slanderous; that defendant relied on the treaty with the Netherlands of 1782; that when the *Wilmington Packet* left Charleston in May 1793, passports and manifests under the treaty of 1782 were not available and could not be obtained; and that absence of such papers was only an omission and not a violation of the treaty. The prize tribunal held (September 30 and October 3, 1793):

> Having heard the Counsellors and Parties on both sides, having seen the Documents relating to the Affair in question, together with what has been furthermore produced by the Parties, and having considered all that was necessary in the Affair and which was to be observed, We declare the Cargoe of the Schooner commanded by the Defendant to be condemned; therefore we adjudge the same as a lawful Prize to the Claimant, reserving the right which the Lord High Admiral may have thereon, wherefore the Claimant shall satisfy the Defendant for the Freight money, which he, the Defendant has agreed for on account of the carrying of the Cargoe; the Costs of the Lawsuit are to be paid and deducted out of the Proceeds of the aforesaid Cargoe.

Implicit in that decision were (*a*) a finding of fact that the cargo was French property and (*b*) a conclusion of law that, in the absence of a passport or sea letter in the form prescribed by the treaty of 1782 with the Netherlands, the provisions of that treaty for "free ships, free goods" were not applicable (see Articles 10, 11, and 25 of Document 5).

It later appeared that the finding of French ownership of the cargo was right; but the ruling on the effect of the treaty was too literalistic. The schooner was truly and admittedly American; she had been furnished with passports at Bordeaux by the American consul, dated July 23, 1793, which were before the tribunal at St. Martin and one of which purported to be issued under Article 25 of the treaty of 1782; and the statement of the master that no sea letters had been issued at Charleston by the time of his sailing thence, early in May 1793, was not only inherently probable but was in fact true.

[1] Document 5; see Articles 10, 11, and 25.

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The sentence of the tribunal directed the payment of the freight money to the defendant out of the proceeds of the cargo; certainly Andrews did not receive that amount (stated at $2,244) at the time, and doubtless he would then have refused it, in view of his protests; and it was surely not at any time collected by Condy & Company;[1] but one may perhaps conjecture that Andrews obtained it later, for the proceeds of the sale of the cargo were in subsequent correspondence concededly put at the round sum of $15,000, and there is an undated memorandum in the claims papers stating an account rendered to Condy by the vendue master of St. Martin of the *net* proceeds of the sale of the cargo (in pieces of eight, or Spanish dollars) as $12,936; the difference between the two sums well might represent the payment to Andrews of the freight money.

The Negotiations

The claim in the case of the *Wilmington Packet* was from the beginning regarded by this Government as pertaining to Jeremiah Condy & Company, of Charleston; the claims papers include a power of attorney from "Moses Andrews late Master and Owner of the Schooner Wilmington Packet of Charleston and her Cargo" to the Condy firm dated April 3, 1794; another power of attorney and transfer of the claim from Andrews to Condy & Company for an expressed consideration of $5,600 are dated, respectively, April 27 and 28, 1795; therein are mentioned freight, demurrage, damage, and expenses, but not cargo. Perhaps Jeremiah Condy & Company were the real owners of the schooner, registered in the name of Andrews; but certainly neither Andrews nor the firm of Condy had at any time any interest in the cargo beyond the freight; and, by the tribunal at St. Martin, the freight money had been adjudged to Andrews, to be paid out of the proceeds of the sale of the cargo.

However, it was not until after the settlement of 1799 that the facts as to the cargo were brought clearly to light; the negotiations proceeded in ignorance thereof; and the claim was urged by the Government of the United States on the well-grounded basis that the judgment of the tribunal of prize at St. Martin was erroneous.

It seems that the case of the *Wilmington Packet* was brought to the attention of the Department of State in 1794 through a committee of merchants of Charleston (of which Jeremiah Condy was a member) and through Philadelphia correspondents of the Condy firm (letter of Condy & Company to the committee of merchants, December 12, 1793, with a print of the protest of the previous day; letter of Condy & Company to Ross & Simson, February 17, 1794, with papers). On April 10, 1794, the Condy firm wrote to Secretary of State Randolph in these terms:

> We take the Liberty of again addressing. By Virtue of a Power of Attorney vested in us by Captain Moses Andrews of the Schooner Wilmington Packett of Charleston, relative to His demand from the Dutch Government for the Amount of his Cargo, Freight, Demurrage and Damages sustained by an unjustifiable Capture of his Vessell and condemnation of his Cargo &C^{a} &C^{a} at St Martins— We refer you to our Letter forwarded to your Office some time past through the

[1] As to the interest of this firm in the case, see below.

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Channel of the Committee of Merchants of Charleston, at which time we annexed a printed Copy of the Protest relative to said Condemnation since then we forwarded to our friends Messrs Ross & Simson authenticated Papers of the transactions, desiring them to hand them to you for perusal

. . . . . .

You will perceive on perusing the different Papers, which are in the Dutch Language and to which translations are annexed—That the Ground on which the existing treaty with [the Netherlands] has been thus shamefully violated is the want of a Sea Letter

Enclosed you will find a certificate from the Custom house of Charleston which clearly establishes that Point. In the room thereof the Vessell was furnished with a sea Letter at Bordeaux by Joseph Fenwick Esqr American Consul there and which was produced in Lieu of the demanded sea Letter

The certificate enclosed with the foregoing letter was signed and sealed by the collector and another official at Charleston; it was to the effect that the *Wilmington Packet* had cleared on May 1, 1793, that no sea letters were then available at Charleston, that sea letters had been forwarded to that port by the Secretary of the Treasury by circular letter of May 13, and that none had been there issued until June 14.

The papers received from Charleston, which included copies and translations of the proceedings of the tribunal at St. Martin, were turned over to John Quincy Adams, who was commissioned Minister Resident at The Hague on May 30, 1794; Adams sailed from Boston for his post on September 17 (Memoirs of John Quincy Adams, I, 39); his credentials were received on November 7, 1794.

The instructions then given to Adams regarding the case of the *Wilmington Packet* were not in writing, so far as the record shows; he wrote on January 24, 1795, asking for further instructions, because his authority was "circumscribed" or rather "indefinite" (D.S., 1 Despatches, Netherlands, 92–93, No. 22); and nearly eighteen months later he returned to the subject, writing (*ibid.*, 332–36, No. 72, July 2, 1796):

I mentioned these circumstances in a letter to the Secretary of State (Mr Randolph) dated Amsterdam January 24th 1795. (N. 22.) at that time the french army had just arrived at the Hague and Amsterdam, and a revolution of government was taking place, which removed from the assembly of the States General, all the persons of whom they had previously been composed, and introduced others in their stead. In the same letter I requested further instructions with regard to the business, but I have never received an answer to it, nor even an acknowledgment that it had been received. I beg leave therefore to refer to it now, and to renew the request for instructions as to what I am to do, in case a disposition to make indemnity, should at any future period be discovered by the government of this country. If a sum of money should be offered eventually by way of composition, am I authorized to accept and receive it for the complainants? If any other mode of settlement should be proposed, can I accede to it? and if money be offered, what sum is the lowest, which can be considered as giving the satisfaction required? I ask for these directions not from any expectation of such an offer, but because if they were at this moment to admit the cause of complaint and declare themselves ready to make a reasonable satisfaction, my powers would cease, and a further delay would be inevitable.—My present authority is only to complain.

No written instruction to Adams on the case of the *Wilmington Packet* is to be found except that of November 25, 1796, which referred to pressing letters from the firm of Condy (who were also correspond-

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ing with Adams at The Hague) and directed that "you cannot be too urgent in your demands in the case of Messrs Condy & Co" (D.S., 3 Instructions, U.S. Ministers, 297).

On December 10, 1794, Adams presented to the President of the States General a memorial on the subject of the *Wilmington Packet;* while this was returned because written in English, it was put into French and delivered two days later (D.S., 1 Despatches, Netherlands, 48–57, No. 12, December 13, 1794, and enclosures). The memorial was referred to the Council of the Colonies, who sent to St. Martin for a report on the facts (*ibid.*, 89–94, No. 22, January 24, 1795). From time to time Adams, both orally and in writing, pressed for an answer to his memorial; but the awaited information from St. Martin was slow to arrive, and, beyond that circumstance, there were sweeping changes of government[1] at The Hague, with "derangement necessarily following" (*ibid.*, 332–36, No. 72, July 2, 1796).

The answer to the memorial of December 1794 was given under date of September 27, 1796, by the Committee of Foreign Relations of the National Batavian Assembly (*ibid.*, 417–31, No. 85, November 1, 1796, enclosure); that rejection of the claim and the merits of the case were thus reviewed by Adams in his despatch last cited:

> I know not whether you have ever had occasion to examine the papers in the case of the Wilmington Packet, or to form a settled opinion upon its substantial merits. The vessel on her passage from Bordeaux to St Thomas' (according to the master's declaration and the vessel's clearance) was captured by a Dutch armed schooner, carried into the Island of St Martin's and there, the *cargo* was condemned but the vessel liberated, and the sentence commands the payment of the freight to the American Captain, and the payment of the costs from the proceeds of the cargo.
>
> The apparent ground of the condemnation was this. The vessel had no Sea-Letter conformable to the 25th Article of the Treaty between the United States and this Republic. The Court considered the Sea-Letter as essential to make the neutrality of the vessel a protection to an Enemy's cargo, according to our Treaty, and as the vessel had none they concluded that the case might be decided according to the ordinary law of nations independent of the formal stipulation of the Treaty. They had evidence produced to them that the vessel though cleared out for St Thomas', was in fact bound to St Domingo. That the property of the cargo, though sworn to by the Captain as belonging to himself, was in truth that of French merchants at Bordeaux and they condemned it therefore as such.
>
> This sentence was evidently irregular. The mere want of a sea-letter at so early a period of the War, together with a consideration of the length of time which must have elapsed since the sailing of the Wilmington Packet from a Port in the United States, gave strong probability to his declaration that no Sea-Letters had been delivered before his departure, nor is it possible to suppose the mere want of this letter could be an equitable cause of confiscation. The Court themselves appear to have been disposed to compromise the matter. The Captain of the Wilmington Packet, says in one of his Protests that they advised him to accept of a proposal made him by the Captor to restore the *vessel and Cargo*, provided he would not insist upon indemnity for his damages and detention. But he was determined to have a judgment, and by that determination lost his cargo.
>
> But the Committee of foreign affairs whose names are signed to the enclosed letter appear to have mistaken altogether the nature of the decision at the Island of St Martin. Their examination of the papers must have been cursory, and even the idea which they had formed of the case is far from being precise: it will be observed that in one part of this letter they expressly and formally justify the condemnation of the *cargo*, because they think it evident that the cargo was french property, and in another they suppose a sentence declaring the capture of

[1] The period of the Batavian Republic was from 1795 to 1806.

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the *vessel*[1] as french property just and legal, for various reasons, and chiefly for the want of a Sea-Letter.

It is not probable that any indemnity in this case will ever be obtained from the Government of this Country. A simple inspection of the grounds which the Committee of foreign affairs have not scrupled to take is sufficient to warrant that inference. But at the same time it is equally clear that they will never support upon rational and fair principles the decision at St Martins. If there had been such ground to take the Committee would not have recurred to such reasoning as will be found in their letter.

They appear fully convinced that the property of the cargo condemned was really French. And when they speak of the *singular conduct* of Captain Andrews, it must be confessed that they speak not without reason. His own protest indicates that from the moment when he was met by the armed vessel which took him, until he sailed from the Island of St Martin, he pursued a continual course of defiance against the captors. He appears to have been very angry himself, and to have used all possible means to provoke those into whose hands he had fallen. This conduct was certainly not prudent but was it only the natural indignation of a man *unjustly* captured? There may be some question of that.

It is stated by the Committee that there was demonstrative evidence produced to the Court, that the vessel, though cleared for St Thomas, was really bound to St Domingo, that part of the papers on board were destroyed; that the cargo was different from the invoices produced, and that it really belonged to french Citizens. Captain Andrews had sworn at Bordeaux at the Consular office, that the cargo, was *his own property*. The captor in his claim says that the *papers found on board* prove that the oath had been falsely taken, and that the property was really French. The Captain in his Answer, says that this charge is an abominable slander, but does not attempt a refutation to the evidence of the *papers* which were before the Court, and to which the Captor referred. At this day it is not Captain Andrews, who complains as the sufferer by the loss of the cargo, but Messrs Jeremiah Condy and C^{o} While these circumstances are not accounted for, it is far from being clear that the capture of the vessel was not justifiable, and that Captain Andrews had a reasonable pretention to anything more than the offer which the President of the Court advised him to accept, but which he chose to reject.

Adams did not fail to keep the case open by a reasoned answer to the note of the Committee of Foreign Relations (October 31, 1796, enclosure to the despatch last cited); but no reply thereto was made during the stay of Adams at The Hague; and he was sure "that it will certainly not be satisfactory" (D.S., 2 Despatches, Netherlands, 35–38, No. 95, March 15, 1797).

The successor of John Quincy Adams as Minister Resident at The Hague was William Vans Murray, who presented his credentials on June 20, 1797. The reply of the Committee of Foreign Relations to the note of Adams of October 31, 1796, was made under date of October 17, 1797 (D.S., 4 Despatches, Netherlands, No. 68, January 13, 1799, enclosure of translation); this second rejection of the claim was, like the first, grounded on the lack of a sea letter; the points made in the reply of the committee are set forth in the rejoinder of Murray, who had at first contemplated writing with no delay (D.S., 3 Despatches, Netherlands, 66–72, No. 16, October 28, 1797; and see his memoranda, of various dates, in the Library of Congress, Papers of William Vans Murray, Commonplace Book); but there was postponement for more than a year, owing in part to the "unsettled situation of power in this country" (D.S., 4 Despatches, Netherlands, No. 68, January 13, 1799).

[1] While Adams makes a point of this, it seems to have been no more than a slip in the note of the Committee.

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The rejoinder of Murray was a paper dated December 26, 1798, which was in form a note to the Minister of Foreign Relations, Van der Goes, but which, as that personage later wrote, is with more justice to be deemed a memoir "travaillé et lumineux". The text of that very able argument of Murray follows (*ibid.*, enclosure; in the text here, for the French quotations from the note of the Committee of October 17, 1797, are substituted their English equivalents from the translation thereof which has been cited; some other brief quotations from the French are also given only in English; the renderings of Vattel are from The Classics of International Law, No. 4, III; Murray's citations, which are written in the left-hand margins of the source paper, are here printed as footnotes with lettered reference symbols):

THE HAGUE *26th Decembr 1798*
& of the Independence of the United States of America the 23d

CITIZEN MINISTER The Undersigned Minister Resident of the United States of America, near the Batavian Republic, had the Honour of receiving in October last Year, a Note from the Committee of Exterior Relations of this Republic, in Answer to the Memoir of Mr Adams, his Predecessor, respecting the Wilmington-Packet. He extremely regretted the Rejection of this Claim, both because of the Loss to Captain Andrews under a most hard and unjust Condemnation of the Cargo of that Vessel, and of the Principles upon which the Committee has vindicated that Measure. Circumstances prevented him from then replying to this Note. His Attention to the Subject, so exceedingly important in the Principles connected with it, has recently been recalled. He renews this Claim at present, under all the Hopes to which his high Confidence in the good Faith of the Batavian Republic, drawn lately closer to foreign Nations, justly entitles him. He therefore again urges the Reclamation of the Cargo of the Wilmington-Packet, upon the Principles of the Batavian Government, and flatters himself that a Re-examination of this Case will ensure Success to his Demand.

As some time has elapsed, it may be agreeable to You, Citizen Minister, to have the Dates of the respective Notes, here laid before You. The First, he believes, on this Subject from Mr Adams is on the 12th December 1794—the Second on the 6th July 1795—the Third on the 6th July 1796—and that on the 27th September 1796, the Committee of Exterior Relations sent him an Answer to these Notes—to which Mr Adams reply'd the 31st October. Near a Year elapsed after this, before the Undersigned heard upon the Subject.

Your first Impression must be, Citizen Minister, that this Government was certainly not precipitate in their Decision on this Claim—your next Opinion, the Undersigned hopes, will be that it is extraordinary it should have been what it was.

Though the Undersigned cannot flatter himself with the Expectation of adding many new Remarks to those which were so ably and justly urged by Mr Adams on the Case itself, yet as the Note of the Committee which he had the Honour to receive, appears to be a serious Effort to give a final Exposition to certain most important Parts of the Treaty, his Duty, and his Respect for the Batavian Government demand an Answer to that Note.

In the above mentioned Correspondence, You, Citizen-Minister, will find a Detail of the Facts and Reasoning upon them. He will not trouble you farther on the Detail of Facts, than by the following Summary of it.

On the 1st May 1793, the Wilmington-Packet, acknowledged American Property, cleared out of Charleston, South-Carolina, on her Voyage to Bourdeaux, and in a very few Days went to Sea—that in September she was taken, on her Passage from Bourdeaux to St Thomas, by the Elyndia, a Dutch armed Vessel, and carry'd into St Martin's. The Court at St Martins condemned the Cargo as french Property, because the Vessel had no Sea Letter. The Committee justify this Condemnation. If they have interpreted the Treaty properly, at least one Half of the American free Bottoms at Sea are exposed immediately on

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the Breaking out of a Batavian War in Europe;—for according to the Plea, which was made by Andrews, the Captain of the Wilmington-Packet, and rejected by the Court of St Martin's, viz; that it was impossible for him to have this Paper, because no Sea-Letter had issued from the distant Port from which he cleared out, till a Month and more after he sailed, it is clear that the great Plea, which the American captured Vessels in such Case would make, would not avail them.

The principal Points assumed by the Committee and deny'd by the Under signed are these.

The Committee insists that a Sea-Letter is necessary by the Treaty [1] to free enemy Goods in American Bottoms. It is deny'd that either by the Treaty, or by the Interpretation of the Paper called a Sea-Letter—A Paper in common Use among all Neutrals—it is necessary to that End to American Merchant Vessels.

They admit that she was an American Vessel, and that it was on that Account that she was acquitted—and they declare that they have proved her Cargo to be French Property The Undersigned is totally ignorant that the Cargo was such. He denies that the Committee have proved it to be so, but alledges that if it be so, it was unjustly condemned.

He flatters himself, Citizen Minister, to be able to show that the Wilmington-Packet was such a free Vessel, as was entitled by the Treaty, to free her Cargo—That the Sea-Letter set up by the Committee, as a Condition to this Right, is not a Condition, but that it is a Piece of *Evidence* only, which in this Case, was unnecessary, in the Admission of the Flag of the Vessel by the Court and the Committee.

If, Citizen Minister, it can be shown that the *"free Vessels"* mentioned in the Treaty, meant the "neutral merchant Vessels belonging to the Subjects or "Inhabitants of the Parties"—a Thing which will hardly be deny'd expressly—and that by a plain Interpretation of the Treaty and of the Character and Operation, which it has attached to Sea-Letters, it shall appear, that the Sea-Letter in this, as in other Cases, relates but to the *Proof of the Bottom*, her Neutrality, and of Course Freedom, it will follow that this Cargo has been condemned contrary to Treaty;—that Andrews is therefore entitled to the Protection of the American Government, which he has sought; and that in good Faith, the Cargo, or its Value with Interest, will be restored to him.

The Committee begin their Note to the Undersigned, of 17th October 1797, with the following Inquiry; "Whether this cargo was under the protection, under "the safeguard, of the neutral flag of the United States"—this Question fairly embraces the whole Subject—If this Cargo be "under the protection of the "neutral flag of the United States", it must be *free*. The Committee thus continue, "Then, it is certain that by the treaties it is not enough for the vessel to "be under American colors; she must besides be provided with a sea letter in due "form; and it is equally evident that the *Wilmington Packet* had not that essential "paper, and therefore she cannot be considered as American property".

The Undersigned admits that for certain Purposes, viz, to show promptly that the Wilmington-Packet was an *American Vessel, that her Voyage might not be interrupted*, the Sea-Letter was necessary, but he does not subscribe to the Conclusion of the Committee, that without this Paper, which they unnecessarily, he thinks, call essential instead of convenient, the Wilmington-Packet could not "be considered as an *American Property*". Had he no other Reason for refusing his assent to this Conclusion, but that which is presented afterwards by the Committee, he could not agree to it;—for they themselves admit her to be "American property"—and say: "We acknowledge that it is on that account "alone that the vessel has been acquitted"!;—and this, notwithstanding the Absence of the Sea-Letter. The Wilmington-Packet then is admitted to have been American Property—You, Citizen Minister, will agree that to set up a Difference between the Nationality of a Vessel and her Priviledges as a Vessel belonging to a Nation, is a very delicate Distinction. The Wilmington-Packet as an American, was a neutral, as a neutral, a free Vessel, and as such, a free Vessel with Treaty Priviledges. That such a Vessel, without the Paper agreed upon between the Parties, as prompt Proof of her Bottom, should be miscontrued by a Rover, and carry'd in, on Suspicion of not being what she pretended to be—

[1] Of October 8, 1782 (Document 5).

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is not extraordinary;—but You, Citizen Minister, know that Courts are bound to admit a Vessel to produce justificatory Papers after Seizure [A]—and that there is a wide Difference, between the Rights of Seizure, and those over the Vessel and Cargo after Examination—that a neutral Vessel may be carry'd in on Suspicion, but when she proves her Neutrality or her "Innocence", she is entitled to the Rights attached to her Neutrality, whatever these Rights may be.

Before the Undersigned proceeds to any Examination of the Sea-Letter, as contrasted with the Use which the Committee makes of it, he begs Leave to remark that the Principles, which have been brought forward against this Claim, seem to him to render necessary a very few Observations on the Terms *free Vessels*. He would observe that whether the Right to carry *free enemy Goods*, be expressed generally by an Agreement to the Right that "*free Vessels make free Goods*"; or by the Words that, "whatever shall be found on Board the Vessels of "the Parties, shall be free, Contraband excepted"—is immaterial—that the Right is the same, under each Mode of Expression, and is attached to the Neutrality and the Flag. He believes that all the Treaties which have adopted the Rule *free Bottoms free Goods*, from that [1] of this Republic with France in 1646, up to the Treaty between the United States and this Republic, have shown an Indifference as to the Language, being satisfy'd with the Adoption of this Rule;—and knowing that Interpretation applies Words to Cases agreeably to Intention and the usual Meaning of the Terms.[B]

Some of the Treaties, as that [2] between this Republic and France in 1650, assure the Liberty of enemy Goods, and all Goods, except Contraband, "found in "*vessels belonging to subjects* of the contracting parties"—whereas in that [3] between Denmark and the Two Sicilies in 1748, the Right is in the Terms of its Stipulation; general, viz: that "free ships make free goods";—with however an explanatory Declaration, which though unnecessary, shows that the Parties trusted Nothing to nice Definitions of that which constituted "free ships"—for they add: " and everything found on *vessels* belonging to subjects of the contracting "parties shall be deemed *free*". Thus it appears that free Ships must mean the *neutral* Vessels of the Parties, agreeably to the Signification of the Terms of the Rule in the Treaties which contain that Priviledge, and that this Priviledge is vested in the *Vessels*.

If the Treaty, under which this Cargo is claimed gives the same Priviledge as if the Language had been as cautious, as that last cited, surely the Moment the Wilmington Packet showed, what is admitted, that she was "a vessel belonging to an American citizen", the Freedom of her Bottom would free her Cargo. This would follow, unless the Treaty had expressly made the Freedom of the Bottom to depend on the Sea-Letter. This, we shall find, is not the Case.

But the 10th Article which speaks of the Right of free Trade, as attached to the *merchant Vessels* of the Parties, must be understood, and will not be deny'd to be connected with the other Article, in which the Right to the *free Vessels* is expressly given. *According to this Principle, free Vessels make free Goods.* Regard is had to the Property of the Vessel, "so that a Neutral Vessel saves the Goods of "an Enemy.[C]

The Treaty then vested the Right to carry *free enemy Goods*, in the merchant Vessels of the United States; and as the Wilmington-Packet was such, she was a free Vessel, and as such, she bore a Flag that protected her Cargo. In this Case, the sole Question, according to these Principles, which the Court of St Martin's had a Right to try, was on the Property of the Vessel;—that proved as American, their rightful Power was arrested by the Treaty.

[A] 2. Hubner ch. 3. §6 & La Liberté de la Navigat[n] P. 114 Note (a)

[B] Vattel liv. 2. ch. 17 § 271.

[C] Martens summ[y] Law of Nations B. 8. ch. 6. § 16. & La liberte de la Navigat[n] P. 122. §. 113.

[1] The text in French of the treaty of April 18, 1646, is in Hauterive, Recueil des traités de commerce et de navigation de la France, II, pt. 1, 254–59.

[2] It seems that the treaty referred to is that of April 27, 1662 (see Hauterive, *op. cit.*, 259–77, Article 35, at p. 270).

[3] The text in French of the treaty of April 6, 1748, is in Wenck, Codex juris gentium, II, 275–304.

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The Undersigned begs Leave further to remark that agreeably to the Rules of Interpretation, the main-Object, the Subject-Matter, and the particular Reason of the Parties is, in the Construction of Papers, to be pursued.[A] If this be just, the Inference is that the Spirit of Construction would always vary, when apply'd to different Sorts of Papers, or their Absence, if the Motive and Reason of each differed;—as the Object of Interpretation is to fulfil the Intention for which a Treaty may require them—That when a Treaty expressly should make enemy Goods, in a free Bottom, Prize, and certain Papers *should be required to demonstrate that the Cargo* was not *enemy Property*, the Paper required would perhaps be construed as strictly necessary, to prove the Freedom of the Goods. In the Treaty [1] between England and Sweden in 1661, a Passport was so required. There the Object was to *prohibit* Something, and a Penalty was annexed. In that Case, between the Parties, such a Paper was necessary, because Presumption being against Goods not protected by a Passport, construction would lean towards the Spirit of the Agreement, and make the Absence of the Passport, a Point of Importance. This, he believes, would be the Biass, which Construction would take, in the Absence of such a Paper. But in the Treaty between the United States and this Republic, except Contraband, every Thing is *permitted*—No Trade prohibited—free Bottoms free the Goods;—and the Sea-letter when examined, will be found, only a Means of facilitating the Object, not a Condition. It will be seen that though the Absence of this Paper, may be an Omission that Prudence forbids, yet that it is no Violation—That while its Presence might save a Vessel from Vexation and *Interruption*, its Absence could not by any Possibility be attended by either fraudulent or honest Gain. There are few Cases indeed, in which a Penalty follows, when no Right is violated;—and for an Omission from which no Advantage can arise to the Party.

To these Propositions the Reasoning of the Committee is opposed. They say that the Vessel could not be considered as "American property", because she had not the Sea-Letter; but finding, he presumes, that this led to too much, they abandon it, by declaring, that it was solely because the Wilmington-Packet was American Property, that she was acquitted.

Before we examine the Sea-Letter, agreeably to the Language of the Treaty, it is a Respect due, Citizen Minister, to the Committee, to state exactly a Proposition which they make, which if correct, goes very far indeed to support their Opinions. They say: "Please to consider finally, Citizen Minister, that the "question is not to be decided by our opinion, nor by that of the ex-Minister "Adams; the whole rests upon the very words of the treaty; that treaty requires "expressly sea letters, in order to free thereby enemy goods on board American "vessels".

The Treaty vests the Priviledge to protect enemy Goods in the merchant Vessels of the United States. If it has also made a Sea-Letter, a Condition without which the Priviledge is diverted, we must be able to find this Condition in the very Words of the Treaty, as the Committee say. It is very important that the real Character of this Paper be examined—and the express Terms of the Treaty ought to be very strong and exclusive, to authorize the above Proposition.

The Treaty expressly and clearly designates the *Use* and *End* of the Sea-Letter. So far we have a Guide, by which we may judge of the Intention of the Parties, in requiring it. Hence may be inferred its Operation, if present;—its Consequences, if absent. The Rest is left to good Faith, which will also make the Spirit of the entire Instrument, its Object.

Two Passages are found in the Treaty expressly on this Paper:—in the First, as connected with other Documents;—in the Second, on Sea-Letters or Passports. It is perhaps the safest Way to let the Treaty itself speak. After declaring the Right of free Trade, to and from Ennemies, to belong to "the *merchant Vessels* of the Parties"—the 10th Article says—"they shall be, never-"theless held, whenever it shall be required, to exhibit, as well upon the high "Seas, as in the Ports, their Sea-Letters and other Documents, described in the "25th Article, *stating expressly that their Effects are not of the Number of those,*

[A] Vattel B. 2 ch. 17. §. 287.

[1] The text of the treaty of October 21, 1661, is in British and Foreign State Papers, I, pt. 1, 701–9.

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"*which are* prohibited as Contraband; and not having any Contraband bound "for an Enemy's Port, they may freely and without Hindrance pursue their "Voyage towards the Port of an Enemy".

In the Article above referred to, viz. the 25th, we find these Words.

Article 25th—"To the End that all Dissention and Quarrel may be avoided "and prevented, it has been agreed, that in Case that One of the Two Parties "happen to be at War, the Vessels belonging to the Subjects or Inhabitants of "the other Ally shall be provided with Sea-Letters or Passports, expressing the "Name, the Property and the Burthen of the Vessel, as also the Name and the "Place of Abode of the Master or Commander of the said Vessel, *to the End that "thereby it may appear that the Vessel really and truely belongs to the Subjects or "Inhabitants of one of the Parties*". Nothing can be more plain and exclusive as to the End and Use of this Paper. It is not *to free enemy Goods*, but to show *the Bottom* to be the Property of One of the Parties.

In the first Passage in the 10th Article, the "Sea-Letter and other Documents" are mentioned, together they were to show Nothing relative to enemy Goods, but to repel Suspicion of Contraband, that the Vessel may proceed. So far we find Nothing in that Passage to warrant the Proposition of the Committee.

In the last cited clear and affirmative Passage, we have the *declared* and *express* End of the Sea-Letter—it is "*to the End* that it may appear that the "Vessel *belongs to the Subjects or Inhabitants* of One of the Parties"—but not a Syllable of its End or Use in *freeing enemy Goods* in such Vessels! The Proof of the Property of the Vessel then is the sole End of this Paper, and it was for that Reason, "*that this might appear*", that the Vessels are to be provided with it.

"When once the purpose which has led the speaker to act is clearly known, "his words must be interpreted and applied in the light of that *purpose only*. "Otherwise he would be made to speak and act contrary to his intention and "to the object he had in view".[A] The Undersigned does not know of a single Rule of Interpretation, which does not appear intended to elucidate more difficult Points, or some Passage whose Ambiguity is left to be cleared up by its Application. In this Case, every *Use* and *Intention* of this Paper is *expressed*. So cautious is the Treaty to point out exclusively the real End and Object of *all the Papers* relative to the Enjoyment of the Priviledge in View, that it declares in speaking of other Papers relating to Cargo, that they are, "to the End that "it may be known whether there are any Effects prohibited, as Contraband, on "Board the Vessels bound to an Enemy"—and then, as if under apparent Security in the Enjoyment of all the Rights attached to the *Vessel*, declares, that the Shippers of Goods are not bound to show whether the Goods belong to Ennemies or not, by their Manifests and mercantile Papers on Board. In fact, Citizen Minister, a studied Superiority over all small Questions upon the Point connected with the Priviledge vested in the *Vessels* of the Parties, seems to preside with a becoming Dignity throughout the whole Instrument;—and the Spirit and Letter of the Passages upon the Papers, relate but to Two Points,—the Nation to whom belonged the Vessel,—and the Evidence, that was to repel the Suspicion, that any Contraband on Board were bound to an Enemy.

The Undersigned is sincere in the Expectation that when these cited Passages are attended to, when their intrinsic and relative Meaning is maturely embraced;—it will be seen that the End and Use of the Sea-Letter, is solely that the Property of the Vessel may appear;—and that when this is seen to be so explicitly stated, to be the End of this Paper, as to amount to an exclusive Signification, that You, Citizen Minister, will not hesitate to agree that the Moment the Wilmington-Packet proved her Bottom, she was, as an American neutral free Vessel, entitled to cover her Cargo; because the Point admitted to have been well proved, without the Sea-Letter, being the only one, to which it could apply, if present, the Right of *free Bottoms free Goods*, which is in the Neutrality of the Bottom, among those who adopt the Principle, must operate, and the Bottom free the Cargo.[B]

Had the Treaty been less explicit on the Use of the Sea-Letter, an Examination of that Paper in common Cases—for it is common to all Neutrals in time of War—would have shown all that the Treaty has expressed. It is to show the *Neutrality*

[A] Vattel L. 2. ch. 17 §. 287.
[B] Martens Ibd

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of a Vessel. In itself, in its Character, it carries no Priviledge. It is Evidence only of the Neutrality of the Bottom. The Bottom once proved by this or other Evidence to be neutral, carries its neutral Rights agreeably to Treaty; or if no Treaty give peculiar Rights, then agreeably to the general Law of Nations. If absent, the main Fact, the Neutrality, can be proved by justificatory Proof, pending Trial, if the Question be, whether enemy Bottom or neutral.[A] If present, this Paper can only show that Fact. If present, it gives not to a neutral Vessel any Right, which she has not without it, if her Neutrality be proved. As then a neutral Vessel, whose Nation had not agreed to the Rule *free Bottoms free Goods*, would be entitled to the Benefits of her neutral Rights, without a Sea-Letter, after she should have proved her Neutrality, so the Wilmington-Packet was entitled to her neutral Rights, after she proved that she was a neutral Vessel. In her Case, her neutral Right was to *free her Cargo*. She could not be admitted to be American Property without the Conclusion following, that she was an American, neutral, "merchant Vessel"; nor after this Conclusion could she rightfully be deny'd the Right secured by Treaty to her, as a *free* merchant Vessel of the United States.

Condemnation in fact then of the Bottom itself, can be the only Consequence, if the Absence of the Sea-Letter is to operate effectively against a neutral Vessel, after being brought in.

Having seen in the cited Passages of the Treaty, what the Sea-Letter is to do, we have a Clue of Inference, as to the Intention of the Parties, as to what it is not to do—and from the declared End and Object of the Paper, what End and Object would fail of Accomplishment without it. You, Citizen Minister, will construe the Sea-Letter thus agreeably to its End and Object, and you will find thereby that it was to prove that Fact which is admitted, the Bottom, and not to *free the Goods* found in the Vessel—these are protected by the Treaty, which relies with such absolute Faith upon the Protection of the Rule granted, that it *expressly* renders Useless all those Precautions, which in common Cases are to prove *to whom the Cargo belongs*—as appears by the cited Passage. The Consignees of Goods would otherwise find a Trap in the Treaty, which disarms their Caution on this Point—for they would not have sent Proofs in the Papers, that the Goods belonged to a Friend.

In examining the Words of the Treaty, and in attending to its Spirit, where the Sea-Letter is appointed to its well known Uses, it is scarcely possible for you, Citizen Minister, to agree that "that treaty requires expressly sea letters, in order "to free thereby enemy goods on board American vessels". We do find the Use of that Paper—but what we find is very short of, and essentially different from the Use and Extent of it, as conceived by the Committee.

In expounding the cited Passages, we are bound to attend to the evident Intention of the Parties, "it is not permissible to twist their words so as to make "them give a contrary meaning. . . . To act contrary to the clear intent of the "parties is what constitutes a violation of the treaty rather than to disclaim the "terms in which it is drawn up".[B] The Grant of the Priviledge is clear—it is to "the merchant Vessels of the Parties". We do not find in the Passages, which most probably have been rely'd on by the Committee, any Expression that authorises the Idea of a Condition having been annexed (under the Form of Sea-Letters—) to the Enjoyment of the Priviledge granted. We find Nothing respecting *free Goods* being connected with the Sea-Letter. On the Contrary, the absent Paper, we find to have been intended, by the Treaty, *to prove the Property of the Vessel, and that only.*

It is difficult to perceive what Connexion exists then between a Paper whose sole Use was *Evidence of the Fact admitted*, and the Priviledge which cleaves to the Fact, when proved without it, viz; Neutrality and American Property.

The Motive of the Parties in requiring Sea-Letters, is expressly declared to be, *to show to whom the Bottom belongs*—that the Voyage may not be interrupted, and "that Quarrels may be prevented". In expounding the Operation of this Paper, we are bound to consider with Precision its Use, as intended by the Parties, and its Subject-Matter; otherwise we should be at a Loss to know to what Subject-Matter to apply it—or when its Use ceases—or what would be a Consequence of its Absence. It is not to do every Thing. We ought then to

[A] 2. Hubner ch. 3. § 3 & 4.
[B] Vattel L. 2 ch. 17 §. 271: 272 & 274.

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have a precise Idea of when its Operation begins, and when it ceases. "We should always give to expressions the sense most suited to the subject matter to which they refer".[1] The Subject-Matter of the Sea-Letter, is the Property of the Bottom, and not *"free Goods"*. Can it be conclusive Reasoning that makes the Sea-Letter, a Provision which relates to one Subject-Matter *only*, the Property of the Vessel, support a Conclusion, which is to render void a Grant expressly made by a Clause that relates exclusively to another Subject-Matter? Would this be to interpret the Clauses and Papers according to their Subject-Matter?—or to give Effect to the Intention of the Parties, and the Reason for requiring the Sea-Letter?

On the Contrary it must be admitted to be highly probable that had the Parties intended to make the Freedom of *enemy Goods*, a Priviledge dependent on the Sea-Letter, they would either not have asserted in general Terms, that the *free Bottoms freed the Goods*, but would have referred to the Sea-Letter, as sole and exclusive Proof of what made a free Bottom; or they would have expressly and in Words declared, that no Vessel without a Sea-Letter, should be entitled to the Priviledge. To suppose otherwise appears to the Undersigned highly unreasonable, considering among other Things, the Caution with which the only Case of the Confiscation of Goods contemplated by the Parties, is attended—he means Contraband. It is highly probable that had the Parties foreseen any other Case, in which Confiscation of Part of a Cargo was proper, they would have also attended to it, and prescribed the Sort of Case, and the Mode of proceeding—But they have not.

It is to repel a Spirit of Construction upon the Treaty which, if subscribed to, settles a Principle, that seems to defeat the Rules of Interpretation, that avails itself of Accident and Impossibility,—that renders void a great Benefit, and brings into Doubt the Utility of a Provision, in the Gratification of which so much Delicacy and Contingency arises, that the Undersigned has felt himself obliged to trespass so long upon your Patience.

Having attempted to show what is the Function of the Sea-Letter generally, and that in particular, which is so fully characterised by the Treaty;—that in itself and the Uses of it, it has no Connexion necessarily, at any Time, nor under the Treaty, with the Freedom of Goods in neutral Bottoms, and that without it, these are entitled to the Rights vested in themselves, when proved to be, what they pretend to be, whatever those Rights are,—he will take the Liberty of remarking upon what, he believes to be the reasonable Consequences of its absence, agreeably to Treaty.

Its Use and End, he trusts, have been shown to be, that the Vessels of the Parties might not be interrupted in their Voyages, on their Showing by this Paper, that they were the Property of either Americans or Batavians—That the Motive of the Parties for giving the Vessels this prompt Proof, is that "Quarrels "and Dissensions may be prevented".

The absence of this Paper may be attended by the Evils which the Treaty meant to prevent by its Exhibition. The Vessel without it, is exposed to Suspicions of not being what that Paper was intended to show her to be, the Property of the Parties; and she is of Course liable to Interruptions. If she prove by justificatory Evidence that she is the Property of one of the Parties, these Quarrels, Doubts and Interruptions are the only Consequences to which the Absence of the Sea-Letter, in fair Construction, can expose her. From that Time, when she so proves herself, she is under that Protection which the Treaty promises to the Vessels of the Parties mutually.

May the Undersigned be permitted to observe that it was in this Stage of the Inquiry, that the Committee have totally mistaken the true Meaning and Import of the Sea-Letter?—They do not appear to have distinguished between the excuseable Causes of Suspicion operating against a Vessel without this Paper, and which may be a Reason for bringing her in for Examination, and the Principles of the Priviledge which apply to her, after Proof of her belonging to one of the Parties. They seem to have confounded the excuseable Cause for bringing in, with a Right to condemn. It is here that they appear not to have well interpreted, what really needed no Interpretation. Yet it cannot follow because the Elyndia might

[1] This is from Vattel, book 2, ch. 17, sec. 280.

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rightfully bring in the Wilmington-Packet on Suspicion, that therefore the Wilmington-Packet had not the Rights attached to her Bottom, when her Bottom was proved to be American.

The Right to seize, and the Right to condemn are very distinct.[A] In this Case, the Captain of the Elyndia might not be chargeable with *Costs and Dammages*, for *bringing in* the Wilmington-Packet—though no Contraband was on Board;—whereas had the Wilmington-Packet had a Sea-Letter, and been brought in, these Costs would have been the Penalty inflicted on the Captor, "for his Temerity".

It was in this Stage of the Inquiry, that the true Measure of the respective Rights belonging to both Vessels, ought to have apply'd Protection to the Cargo of the American Vessel—and refused Costs against the Captor for bringing her in. Here it was that when the Prize, a Vessel of an Ally, clothed with Treaty Priviledges, proved herself to be, what her other Papers proved her to be, that the Right of the Captor was arrested by Treaty. But for the Court of S[t] Martin's to extend the Captor's Right any further, and even to the Cargo, whether French Property or not, was to set up Implication against clear Expression—to confound dissimilar Provisions, and to add a new Article to the Treaty, by interpreting it at pleasure.

The Undersigned hopes, Citizen Minister, that he has shown that the Wilmington-Packet was such a free Vessel, as was entitled by Treaty to protect her Cargo, if even Enemy's Property,—that the Sea-Letter, set up by the Court and the Committee, as a Condition, was not a Condition, but a Piece of Evidence, which the Admission of the Committee rendered unnecessary to the only Use intended by Treaty;—and that its Absence did not destroy the Right of this Vessel, to carry free Goods.

Other Passages of the Note from the Committee to the Undersigned, are in all Respects worthy of Examination; and his Duty and his Respect render it necessary that he should still a little trespass upon your Attention.

The Committee say: "The master of the vessel, Andrews, knew well that this "paper, the sea letter, was indispensable, . . . and it was on that account that "they pretended that the vessel was bound to St. Thomas, though her true "destination was Santo Domingo". Here Andrews is made to be guilty of false Pretences, without an adequate Motive—for it was immaterial to what Port the Property, if Enemy, was bound. If he knew that a Sea-Letter was indispensable to free the Goods, he must have known also, that in all Cases, where the Neutrality of the Vessel does not free the Goods, the Destination of the Goods is not considered;—that the *enemy Goods*, and not the *Port to which they are consigned*, makes the Plea of the Captor.

Andrews then had no Motive of this Sort to disguise his Course; because if that Paper were essential, his actually being bound to S[t] Thomas, would not have freed the Cargo at S[t] Martin's. So that the Inference, that he knew a Sea-Letter was indispensable, and therefore disguised his Destination, does not appear well drawn. If Andrews had had Contraband bound to S[t] Domingo, it might have been a Motive, whether with or without Sea-Letter to pretend that he was bound to a neutral Port;—but he had no Contraband, that we hear of. The Undersigned is not convinced by this Reasoning, that the Property was French, that the Voyage was disguised,[1]—that the Papers were torn or injured by *Andrews*,—nor that he believed a Sea-Letter was necessary.

The Undersigned from all he is able to collect, respecting the Property of the Cargo, does not find Reason to think that it was French Property. And as to Andrews Opinion of the Sea-Letter, he states in his published Protest of November 1793 at Charleston, supported in the Assertion by his Mate and a Seaman, that the Governor of S[t] Martin's offered him Vessel and Cargo, provided he would give up Costs and Dammages—for the Captor had much injured his Vessel—that this Offer was made in Court—and that he refused it. This does not appear to support the Idea that he knew that the Sea-Letter was essential to protect *enemy Goods*—or if he thought so—the Inference is, that he knew there were no *enemy Goods* on Board.

[A] Hubner

[1] There is little doubt that the true destination of the *Wilmington Packet* was Santo Domingo; and the cargo was French.

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With Respect to the Remarks, which the Committee did the Undersigned the Honour to make on the Question, to what Individual American Citizen belonged the Wilmington Packet,—whether to Mr Condy, or to Captain Andrews, they are perfectly irrelative to the Principles of the Case.

The Committee in showing the Importance of the Sea-Letter—its *Convenience* has never been deny'd—have put a supposed Case. They fear that without an Exaction of this Paper, in order to free Goods, a fictitious Sale might be made by a Person "of a friendly nation, with whom there should be no such stipula-"tion"—from whose Vessels, they say, they might justly make Prize of Enemy's Goods—"and that such vessel should even be provided with all the necessary "papers to prove such sale; and it is in order to guard against such a fraud . . . "that it has been found necessary to stipulate expressly that the vessels of the "respective parties should be provided with sea letters". This is but an Extract of the Paragraph, in which is stated the supposed Mischief—and the Motives for guarding against it. All the principal Parts of the Doctrine contained in this Passage of the Committee, the Undersigned has attempted to show, are not tenable. As a Remedy however, of the supposed Fraud, it is not applicable, and is not certain. It can not be deny'd that the Argument from a possible Fraud, in this Sort of Case, is no good Reason for oversetting the Priviledge, which rests upon that Proof, the Ownership of the Bottom, which when fairly made, repels the Idea of Fraud. But this Rule of Caution, if its Principles relative to the true End of a Sea-Letter were just, is neither applicable to this Case, nor in general sufficient to protect from the contemplated Deception.

The Object of the proposed Rule is to guard against Vessels, which are not bonâ Fide American Vessels—and to prevent such through fraudulent Papers, from participating the Rights of *free Bottoms, free Goods*, (which they infer not to be a Right, unless secured by Treaty—);—Now the Wilmington Packet is acknowledged by them, not to be of such Class of Doubtful Vessels, as they admit, *that it was because she was an American Vessel, that she was discharged.*

As a general Rule, it must often prove inefficacious;—for are not Sea-Letters as easily forged, as other Papers?—as for instance, the *Consular Passport at Bourdeaux*, which the Wilmington Packet had *officially authenticated*, and the *Certificate of the Register*, which in fact may be considered as the very Keel of all the Papers necessary to identify the Vessels of the United States.

This Rule had it been useful at all or applicable to its particular Object, viz, the Question *to whom* the Vessel bonâ Fide belonged,—would have authorised the Condemnation of the Vessel itself—because the Caution of the Rule demands a Sea-Letter to prove to whom the Vessel actually belongs. As to the Conclusions which are mingled with it, respecting the Operation of the Sea-Letter, these are independent of the *Object* of the Rule itself, which is to protect against Deception on the Point of the bonâ Fide Ownership of the Bottom. Now though it is not surprising, that this Rule was not apply'd against the Wilmington-Packet, agreeably to the defined Object, it is extraordinary that its presumed Use and Necessity should be reasoned from to support a Conclusion absolutely distant from the Causes of its Institution.

The Undersigned will make one Remark on the whole Tenor of Interpretation which the Committee seem to him to have used in applying the Treaty to this Case. He can see no Security under Treaty for any American Vessel *in the Ports* of this Republic, if she has not a Sea-Letter—for by Treaty, she is bound, if required, to show that Paper in Port. From the great Distance of the United States, and from Accident, there must often be Vessels here without one, particularly in the first Six Months of a Batavian War. The Committee make the Rights under Treaty depend on that Paper. They say "The American flag . . . "shall be always respected whenever the proofs required by the existing treaty ". . . shall be found in proper order". And we are taught the Principles of Construction, by this Case, which are to be apply'd in the Absence of a Paper, however other Proof may supply its Place.

He does not believe that the Rights under Treaty would be refused to American Vessels without Sea-Letters, if the Sea-Letter was required to be shown in Port, provided the Vessel could prove, by other Ways, her Bottom, as an American. He is sure that this Government would repel any such Construction of the Treaty in such Case, and accord Treaty Rights to the Flag and Bottom, when proved.

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In such Case this Government, he trusts, would say—if the Vessel prove herself to be an American Bottom, we will perform the Duties enjoined by Treaty. The Sea-Letter is intended that this Fact, the bonâ fide Property of the Vessel may appear;—if on Account of the Absence of that and other Proof, she can not show this fact,—she will not fall within Priviledge—if she does prove it, she must be priviledged.

The Batavian Government would thus be not willing to avail itself of an unintentional Omission, nor to seize upon Accident, when no Fraud appeared, nor upon Impossibility, to defeat the Right appurtenant to the Bottom. He so loves to think of the good Faith of Batavia. So thinking he is at a Loss to discover, upon what Principle the Rights of being treated, *as of the most favored Nation*, having *Passports supply'd*, if the Originals were *lost by Tempest*, and other Priviledges secured by Treaty, would be allowed to such Vessels and yet that the same and other Rights of the Treaty would be refused to such Vessel, if brought into the same Port by a Batavian Cruizer.

With Respect to the closing Remark, which it has pleased the Committee to make, viz, "The Government of the United States of America execrates, we are "certain of it, the maxim that a posterior treaty with one nation can enervate "or annul an anterior one with another". The Undersigned would beg Leave to observe, that if ever such Maxim existed, it is unknown to the Government, which he has the Honour to represent, and that spotless, as is its Faith, "while the Performance of its own Engagements, gives it a just Claim upon Others, for that which is due to itself", its Dignity forbids any Inquiry into such a Maxim, unless it be formally brought into View.

Having so far had the Honour to attend to the Note of the Committee to him, he begs Leave, Citizen Minister, to appeal through you with Earnestness, upon the single Point, which ought to have arrested the Decree of your Colonial Court, had every other Persuasion been overlooked—The Impossibility of the Sea-Letter. He is confident of its irresistible Force upon your Mind.

Neutral Vessels, it is admitted, must generally be try'd, by the Papers found on Board [A]—"and not by those which their commanders may bring forward after "the event: unless these last were absent as a result of violence on the part of "the enemy, because of some misfortune or some extraordinary disaster, *and* "*without fault of the captain or of the owner*".

If this be true respecting the Proof, which a Vessel may bring, in the Absence of Papers necessary to show her Neutrality, he says, it must be true to secure the Rights, which attach to her Neutrality, or it proves Nothing—that if even the Sea-Letter had been considered by Treaty to be a necessary Proof of the Right to *carry free Goods*, (which he thinks was never thought of before October last Year), yet as though Papers are necessary to prove Neutrality, and as their Absence may be supply'd by other Proof, in the Case above cited; so the Wilmington Packet would on the same Principle be entitled to her Rights of Neutrality, in the Absence of the Sea-Letter, after she had made out her Neutrality—and on the Plea of Impossibility, the Omission not being the Fault of the Captain or Owner; the Right being to carry free, Goods of an Enemy, she would on the above Principle have been entitled to do so.

He possesses official Proof that the Wilmington Packet cleared out from the Port of Charleston, South-Carolina, the 1st May 1793—that Sea-Letters were not issued from that Port, till the 14th June after.

All the World knows that Charleston, South-Carolina, is at least Seven Hundred Miles from Philadelphia.

The Proclamation [1] of the President of the United States, announcing the Duties of the Nation, to be those of a neutral Nation, did not issue till about the 22d April preceeding—Eight or Ten Days before this Vessel cleared out—And the Sea-Letters were not at Charleston, South Carolina, before the Middle of June.

It was not the Fault of Andrews, that he had no Sea-Letter. He could not gain by its Absence—though he might suffer Embarassments by it.

The Undersigned would appeal to you Citizen Minister, with Confidence in the Integrity of Batavian Principles, whether the Vessels of the United States in

[A] 2. Hubner ch. 3. §. 3.

[1] 11 Statutes at Large, 753.

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distant Parts of the World, were then subject to any Thing more than Interruption, if in such a State of Things, not a Sea Letter had been found in any of them.

There is some very good Authority to justify him in saying, that so soon after the Beginning of the War, the Batavian Cruizers were not entitled to take the Goods of a Friend in the Bottom of an Enemy, if those Goods were shipped, before the War was known, or before a reasonable Length of Time, by which it might be presumed to be known;—much less to violate a neutral Vessel of the United States, on the Absence of a Paper, which it was not possible to have.

The Impossibility of having this Paper would be a good Plea, if even the Treaty had made it a Condition to the Priviledge.

He thinks it a safe Proposition to say that a Right vested in a Vessel belonging to a certain or particular Man or Nation, if the Vessel's Property be admitted, can not be forfeited by Implication, on the Breach of an impossible Condition.

It has been deny'd that the Sea-Letter, is the Condition by which, the merchant Vessels of the United States are entitled to *carry free enemy Goods*.

The Condition can not be found, he asserts, in the Treaty, as expressed—Yet its Implication is set up by an Interpretation unfavourable to the Grant, and by which the Grant is rendered null, though the Condition was impossible, and its Failure without Fault, to sanctify the Condemnation of a valuable Cargo.

Full in its Confidence in the good Faith and Wisdom of this Government, the Government of the United States, Citizen Minister, expects its Decision as soon as possible, upon this Case. The high Importance of the Principles connected with it, he believes, will awaken your serious Attention to it, and he trusts excuse the Length of these Remarks.

Accept, Citizen Minister, the Assurance of his Esteem, and his high Respect.

W. V. MURRAY.

The MINISTER OF FOREIGN AFFAIRS of the Batavian Republic

In his despatch (cited above) enclosing a copy of the foregoing note or memoir, Murray wrote:

I have not urged for costs & damages Sir because in the actual state of this case I thought myself at liberty to obtain the principal, if it can be had, without the costs—and also because in pressing the operation of the Sea Letter agreeably to Treaty, perhaps the Sea Letter may be essential to entitle to costs & damages for being brought in.

There followed an acknowledgment from Van der Goes (February 5, 1799); the memoir had been submitted to the Executive Directory; Murray on the next day pointed out that there had been long delay in the case and offered to transmit his copies of the proceedings at St. Martin and of the printed protest made at Charleston (D.S., 4 Despatches, Netherlands, enclosures to a private letter of February 8, 1799, which is not in the volume cited).

On August 27, 1799, Murray pressed for "a quick decision"; that decision was given under date of the following September 4 and was answered by Murray the next day; in the despatch enclosing the three items of correspondence last mentioned, Murray wrote (*ibid.*, No. 93, September 7, 1799; the enclosures are not with the despatch but are in the claims papers):

on the Fifth I received the decision of the government in Mr Van der Goes's note . . . it sets aside the judgment of the court at St Martins, & disavows the motives & arguments which had been brought forward to support it. It affirms the construction suitable to the true sense of Sea-Letters. In one of my interviews in the Spring with him, & I have had I believe twenty on this subject, he held up the idea of putting the parties to the remedies which their tribunals afforded by appeals—to this was easily opposed that the subject was at present,

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& had been since the first answer of the Committee to Mr Adams's notes, before the two Governments—his own government having vindicated the judgment had assumed a construction of the Treaty repugnant to its sense, and had thus waved the ordinary course of trying such questions on appeal. He did not urge this further & from the first was I believe truly sorry for the inconsistent & wild doctrines of the former Committee.

I have also the honour to inclose my note of the 6th [5th] instt in which I accept the proposal to reduce the sum total which 69674—florins.[1] The critical state of the times & the difficulties in which the settlement will be involved by delay, will explain the reason of that concession.

The notes of September 4 and 5, above cited, agreeing on a settlement of the case, were in these terms:

[*Mr. Van der Goes to Mr. Murray, September 4, 1799, translation*]

In virtue of an order of the Executive Directory, of yesterday, I have the honor to send to you the reply with relation to the *Wilmington Packet* for which your just impatience has long been asking.

The note, or, to do it more justice, the clear and finished memoir which you addressed to me on December 26, 1798, states a principle which the Batavian Government declares that it accepts: that is, that a free vessel frees its cargo. Hence the Directory makes no difficulty over recognizing, as you do, the lack of logic of the decision handed down by the court of St. Martin, which, though declaring the *Wilmington Packet* a free vessel, nevertheless confiscated its cargo. Despite this admission, the Directory does not believe itself qualified—as long as the judicial power has not said its last word and as long as the ordinary legal channels are still open to the complainants—to interfere in the administration of justice.

But desiring, none the less, finally to conclude, to the satisfaction of the United States, an affair which has been delayed only by a concurrence of fortuitous circumstances, it is disposed to end the difference by an amicable and reciprocal arrangement based on a reasonable appraisal of the claim, unless the interested parties should prefer to take the course of appeal in order to have the decision reviewed.

My Government desires too sincerely to strengthen the good harmony prevailing between the Batavian Republic and the United States not to give, on this occasion, all the proofs in its power of its inviolable attachment to the treaties existing between the two powers.

I am therefore instructed, Sir, to invite you, in its name, to cooperate in this arrangement through your good offices. You know that the first step should tend to obtain an exact estimate of the actual value of the cargo. If the statement thereof which has been submitted up to the present has been calculated in assignats, as is probable, it would require quite a considerable reduction.

[*Mr. Murray to Mr. Van der Goes, September 5, 1799*]

Though the claimants of the Indemnification have full right to the whole value of the Cargo of the Wilmington Packet—viz to 69674 florins; & though the principle of indemnification for an improper condemnation, when once agreed to, carries with it an obligation to adhere to the papers, which having been the basis of the court's decision, can not afterwards be refused as evidence; & though these papers prove that the value of the Cargo was as is above stated; yet, to shorten the sufferings & lessen the losses of the Individuals interested in this case, by a prompt settlement, I am disposed to deduct from the sum, notwithstanding the sacrifice the owners have already made, in not pressing their just claims to indemnification for damages sustained by the vessel while in port. I shall therefore be happy in an early opportunity of entering upon the arrangement which you propose.

[1] The equivalent of the invoice value of the cargo, 139,348 francs, on the assumption that the invoice figures were of coin, not of paper assignats.

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As to the evaluation of this Cargo; if you will do me the honour to cast your eyes on the Items of the Invoice, you will perceive one of two truths; either the charges were not made in assignats; or if so, that assignats bore gold & silver value. The Cargo was in Gold & Silver evaluation, & was paid for agreeably to those currencies.[1]

Whatever have been the delay attending this case, I have never suffered a doubt on the final decision respecting the great principles involved in it. My reliance on the wisdom & good faith of your Government, Citizen Minister, has not been disappointed, and I shall be extremely happy in communicating to the Government which I have the honour to represent, the note which you had the goodness to send me yesterday.

Agreement on a settlement, but not upon its basis, had been reached; by the following note of Van der Goes of November 14, 1799, there was proposed as such basis the proceeds of the sale of the cargo at St. Martin, or $15,000 (D.S., 4 Despatches, Netherlands, No. 103, November 18, 1799, enclosure, translation):

The frank and straightforward way in which the *Wilmington Packet* affair has been treated between us two thus far makes me feel certain in advance that you will have the kindness to weigh the following considerations with impartiality.

The Executive Directory could, strictly speaking, have objected to intervening in a purely civil case at a time when the complainants had not yet exhausted all the means afforded them by the laws. In particular, the ordinary resource of *appeal*, which the captain of the *Wilmington Packet* refused to employ.

Now, as this matter is not yet a political matter, properly speaking, between Governments, the intervention which, at your solicitation, the Batavian Government shows itself disposed to grant, is a friendly condescension on its part, and not a duty. It is a proof that, being zealous to display its scrupulous attachment to the spirit of the treaty that unites it with America, it makes it a delicate point of honor to prove its full adherence to the great principles that form its basis.

But if the Executive Directory shows itself disposed to terminate the matter by a friendly arrangement, it has the right to expect in return an equal degree of readiness and, I dare to say, of generosity on the part of the persons concerned.

Consequently, if it is willing to grant them reasonable compensation, it also expects to see their claims modified in accordance with equity and the very nature of the case. That alone suffices to show how inadmissible an excessive or even too strict accounting of the damages and compensation for them would be.

According to these considerations, the force of which your equity will perceive, the Directory regards the proposal of an indemnification calculated on the value of the cargo of the *Wilmington Packet in cash* as inacceptable.

In addition to the fact that in 1793 all commercial transactions with France were calculated in assignats, except in case of an express stipulation, the report of the commandant of St. Martin, addressed to the Committee on Affairs of the Colonies on November 25, 1795, contains a document from which it may be inferred that the cargo of the American vessel was not excepted from the general rule.

The uncertainty of this basis would, therefore, lead to dissensions which might, despite the good will of the Batavian Government, place, if not an insurmountable obstacle, at least endless delays in the way of a settlement.

The proceeds of the sale of the vessel's cargo at St. Martin, as stated by the report cited above, which proves that that cargo was sold there for 15,000 pieces of eight, have appeared to the Directory the sole basis to adopt.

If it appears acceptable to you, as I take pleasure in not doubting in the least, since the cargo was sold at a higher price at St. Martin than it would have been even at the place to which it was consigned, I am authorized to treat with you on that basis for settling definitively a matter in which you have had occasion to note more than once, since we have been working on it together, the importance which my Government attaches to its relations with the United States of America.

[1] This is erroneous.

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Murray accepted the proposal by his note of November 17, thinking it to be not merely a basis, but "a sum agreed on which you will pay" (*ibid.*, enclosure); and he wrote to the Secretary of State as follows in the despatch last cited:

I have the honour to enclose an official note of Mr Van der Goes the Minister of Ext. Rels of the 14th which I received the 15th & answered to day. In this he offers to make the sale of the cargo of the Wilmington Packet the basis of settlement. I had offered to reduce the claim from 69000 guilds to 60000. They insist from the date of the transaction, June 1793, & from the affixed prices in the invoice, that the cargo was estimated in assignats:—from some information which I have saught from a Bordeaux french merchant, now here, I am disposed to suspect that this allegation may be true—at least so doubtful as to weaken the claim, & render a yet greater sacrifice less painful. I accepted the offered basis under a limitation as to principle which will exclude the case, in that respect, from precedents of an injurious nature:—& merely consider it as a measure by which the sum to be paid is ascertained, and not as the true scale of value. To this I was induced by some motives of alarm—for some days there having existed a general expectation among men in affairs of an explosion that would overturn the government. The events which have entirely demolished the French constitution on the 8th & 9th inst—seem to have at least suspended a revolution here—but the alarm has not yet subsided. With these motives added to the miserable delays experienced in this case, I thought it best to accept the offer.

Acting on his misapprehension that the *figure* of the settlement, and not only the *basis*, had been agreed on, Murray wrote, under date of December 3, 1799, this rather stiff note (D.S., 4 Despatches, Netherlands, No. 108, December 13, 1799, enclosure):

I have already agreed to accept the sale of the Cargo of the Wilmington Packet as the basis of terminating amicably that case; since, I have not had the honour to hear from you

It is impossible for me any longer to reconcile the extreme slowness of your deliberations, with the respect due to the Government which I have the honour to represent, on a case so completely understood! I request you to inform me in writing what you are disposed to do & when—That I may be enabled to give the President of the United States something *final* on that long standing case.

I have already had the honour of transmitting to the President copies of your last note & of my answer & he doubtless will expect, and with just reason, that some degree of promptitude should have evinced a real disposition on the part of the Batavian Republic to remedy in part, the injuries done under its judicial administration.

I propose to you then Citizen Minister once more! to make the sale the Basis—that is to pay me, for the use of the injured 15,000 pezos of Eight. I have a right to expect a speedy answer & I demand one.

There ensued the correspondence consummating the settlement, which is printed following the headnote, namely, the note of Van der Goes of December 7 and the note of Murray of December 12; in transmitting copies of these with his cited despatch of December 13, Murray wrote:

This sum [20,000 guilders] may be below its value—as it sold for F37500 [florins or guilders; say $15,000] at St Martins. In examining the Invoice, & annexed prices at Bordeaux, however, with a merchant of great integrity of that place, I believe a great part of, if not the whole cargo was estimated in assignats, in 1793. But the most pressing motive to accept is in the present uncertain state of things here. General Brune is expected to-morrow or next day from Paris—none can define exactly his own apprehensions, but all fear a change.

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Ten days later a further despatch from Murray gave these details (*ibid.*, No. 110, December 23, 1799):

The case of the Wilmington Packet will be at length settled. They will pay (into the hands of our Bankers at Amsterdam as I requested—)—the sum of Twenty thousand Florins Holl^{d} cur^{t}. I shall give them an acquittance in full of all claims. They will use that acquittance by assigning it ostensibly to a third person who will force the Privateer, & the Securities to her bond, at St Martins, to repay that sum. This sum comes out of the private chest of the government—because as the affairs of the Committee of The Indies are not yet organised & assimilated with the new system, & as that committee used to act in a degree as Sovereign over Colonial affairs—they have no way of obtaining money from the West India chest—if there be even that much in it.

The acquittance was duly given on January 19, 1800 (text printed above); and in despatches of February 2 and February 6, Murray communicated the fact of payment and enclosed the banker's receipt (*ibid.*, Nos. 115 and 116).

Distribution of the Fund

On the face of the papers made up at Bordeaux and St. Martin by Moses Andrews, master of the *Wilmington Packet*, he was the sole party interested in the claim in this case, whether for cargo, freight, damages, demurrage, interest, or otherwise; the tribunal at St. Martin adjudged the freight money to Andrews; and, as has been pointed out, it seems not unlikely that Andrews had collected it from the fund arising from the sale of the cargo. The power of attorney which Andrews gave to Jeremiah Condy & Company on April 3, 1794, after words of authorization, reads thus:

for and on Account of the Capture and carrying the said Schooner Wilmington Packet in the Island of Saint Martins, and there Condemning the Cargo then on Board the said Schooner, together with all Costs, Charges, Interest & Expenses incurred by the said Capture and Condemnation of the said Cargo, and also for the Freight, Demurrage, detention and Damages done to the said Vessel, and all and every Injurey sustained by the same

But the transfer of the claim by Andrews to Condy & Company, dated April 28, 1795, for an expressed consideration of $5,600, covered "freight Demurrage, Damages, charges and Expences" (the accompanying power of attorney of April 27 adds "costs"), with no mention of cargo.

Under date of June 17, 1797, the attitude of Condy was stated in a letter to Secretary of State Pickering (claims papers); Condy was willing to accept freight and demurrage, or even freight alone; there is no record of the communication of this letter to The Hague; and it is clear that Murray did not know of it, for Condy asked no more, except perhaps demurrage, than the tribunal at St. Martin had adjudged; the substance of the letter follows:

Since I had the honor of conversing with you yesterday, on the Subject of the Schooner Wilmington Packet; I have fully weighed in my mind, what then passed. Viewing the Backwardness of the Dutch Govern^{t} to render my House that compensation which is clearly our due and a Satisfaction they owe to our Government. Viewing the infinite trouble, we have already occasioned to your Department in conducting this case, and finally, viewing the necessity we are

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under of early pecuniary Relief; we have determined in our minds; to rest satisfied, and renounce any further claim on that Government, if they will immediately pay over to the American Minister at the Hague, the freight of the Cargo and reasonable Demurrage, a Statement of which is in the hands of the Minister—or, should there be any objection to that; pay any freight that shall be adjudged fair, and equitable.

On April 4, 1798, the following instruction was written to Murray at The Hague (D.S., 4 Instructions, U.S. Ministers, 265):

Mr John Francis Rubod, a French citizen, goes to the Hague, in order to solicit the claim of Capt Andrews, the reputed owner of the cargo of the Schooner Wilmington Packet, mentioned in your instructions. Mr Rubod is furnished with a regular letter of attoney for this purpose. I therefore pray you to give him such aid and information in the affair, as the nature of the case may render proper and necessary.

While not specifically so stated in the foregoing rather vague instruction, there is no doubt that the power of attorney which Rubod had was from Andrews; Rubod went to The Hague and is mentioned in Murray's despatch of September 7, 1799 (No. 93, cited above): "Mr Rubod . . . also desired me to get as much as I could—but to yield something if necessary to partial success"; when the settlement was completed, Murray wrote to "the Mr Rubod whom you introduced" (No. 110, of December 23, 1799, cited above), who, he said, "has a power of attorney from Mr Condy"; but this last statement was a slip, and Murray later wrote that the power to Rubod was "from Andrews only"; Rubod represented certain French merchants of Bordeaux, owners, in part at least, of the cargo; the interest of Condy & Company in the fund received was hostile to that of the cargo owners.

Demand for part of the fund was made on behalf of one of the Bordeaux merchants almost immediately after payment at The Hague; Murray wrote thus on February 2, 1800 (No. 115, cited above):

From Mr Adam's correspondence it seems that Messrs Jeremiah Condy & Co of Charleston S.C. are interested—as well as Captain Andrews.

From an invoice or *Facture* sent me yesterday by Mr Croese & Co of Amsterdam as the evidence of a demand made by Mr Lorrando of Bourdeaux it is proved that, notwithstanding Capt. Andrews's oath before Mr Fenwick in 1793 at Bordeaux, Mr Lorrando claims above 24000 livres worth of the cargo as being shipped for St Domingo (instead of St Thomas's)—& specifies the articles.

The sum obtained is in full discharge of all demands upon this government and upon the privateer, as you will see Sir by the inclosed paper in the form of a bill indorsed by government upon the Committee of the Indies & of a condition discharge in full.

The claim was for the Cargo—damages—demurrage—and there must be many proprietors.

In this mixture of claim, I have not thought myself authorised to pay this sum to the correspondent of Mr. Rubod who with your letter of introduction bears a power of attorney from Andrews only.

Besides, the French merchants can be entitled but to an average of the indemnity.

I have then Sir placed the Twenty thousand guilders with the House of Willinks Van Staphorst & Hubbard at Amsterdam, bankers of the U.S.—subject to the order of our government or of its Minister here. Mr Condy I hope will take proper steps with government to draw it.

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And four days later (No. 116, cited above) Murray wrote: "French agents from Bordeaux lay claim to part—I reject all personal claims—& wait your orders—Mr Condy I presume has the best right to it."

At the Department of State possible conflict of interests in the fund seems neither to have been considered nor understood; probably there were not then at Philadelphia copies of all the papers which were in the hands of Murray at The Hague; Pickering wrote this instruction on April 11, 1800 (D.S., 5 Instructions, U.S. Ministers, 323–24):

> By the inclosed letter from Jeremiah Condy and the papers therein referred to, you will see the extent of his claim on the indemnity at length granted by the Dutch Government in the case of the Wilmington Packet. If therefore that money has not been paid to Mr Rebout (or Rubod) it seems eligible and right to adopt the course suggested by Mr Condy, and to have the money lodged with our bankers at Amsterdam, till further orders.

The papers sent with that instruction are not now to be certainly identified; but the "extent of his claim on the indemnity" is stated by Condy in a signed paper of November 18, 1801, titled "Mr Condy's claim on the moneys received . . .". Putting the whole amount of the fund at $8,000 (the assumed equivalent of the 20,000 guilders), that paper lists the following items:

Commission for prosecuting the claim	$400. 00
Freight	2, 140. 00
Demurrage	714. 00
Injury to the vessel	400. 00
Expenses	216. 00
Interest on the foregoing at 7 percent	2, 234. 92
Total	$6, 104. 92

The balance ($1,895.08) is taken as indemnification for "the injury sustained by the delay and the loss of a voyage and return freight"; that Condy had no proprietary interest in the cargo is obvious.

Murray continued to refuse all responsibility for distribution of the fund and was somewhat disillusioned by the facts appearing; he wrote from Paris on July 9, 1800 (D.S., 4 Despatches, Netherlands; this unnumbered despatch is addressed to Charles Lee, as Secretary of State; Lee, then Attorney General, served as Secretary of State *ad interim* from May 13 to June 5, 1800):

> I am happy in having precisely anticipated your instructions on this subject. I would not pay, nor order to be paid, a stiver of the sum to Mr Rubod, nor to any other:—but, as I had the honour of informing Colonel Pickering immediately after the money was paid by the Batavian Government,—I had the whole sum, viz Twenty Thousand Guilders, paid to Messrs Willinks Van Staphorsts & Hubbard of Amsterdam—subject to the orders of our Government. I decline entering in to correspondence with the parties concerned. The sum obtained was paid on my giving to the Batavian Government a complete discharge against all claims & demands, & a transfer of all rights of suit against the Captor. There seems to have been some tricks play'd in this case. The papers, sworn to at Bordeaux authorised me to consider the cargo as american property. That was one of the grounds on which I claimed. The money was scarcely in the Bankers hands, when a claim was sent to me for above twenty thousand Livres, on account of a Mr Lorrando of Bordeaux, accompany'd by his vouchers to show that such

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& such bales &c &c were put on board the Wilmington Packet to be sold not at St Thomas's, the pretended destination, but at St Domingo. I refused, of course, to attend to the claim. This fact I confess, Sir, has not a little contributed to weaken my confidence in papers apparently the fairest. The principle contended for, that the absence of a Sea Letter can not authorise a departure from the priviledge of free bottom, provided the bottom can be proved, & which has been admitted by the justice done in the case, is the only consolation I feel in having conscientiously but erroneously supported a case unsound in some of its parts.

The last despatch written in the case by Murray was that of December 4, 1800 (*ibid.*, No. 120), in which he refers to correspondence with Condy and gives his views regarding a "dividend", as follows:

I have just received duplicates of a letter from Mr Condy, the party concerned in the Wilmington Pacquet case, of 8 Sep^{r}

Mr Condy supposes that "in settling this business with the Dutch government "(so as to render the business easy hereafter—)"—that I had—"fixed on some "specific sum for the Vessel independent of the cargo—for freight demurrage "injury to the vessel, costs, interests, & general injury and that" I "would "transmit him" a copy of that "statement"

Nothing of this sort was done—it could be reasonably expected but from a trial at law—or from an arbitration. It is true Sir that the principles connected with this case were more attended to by me than the specific point of damages, costs—demurrage. I did not believe the W. Pacquet entitled to damages for being *brought in*—as to costs & damages for detention & injury, had there been less difficulty in obtaining any part of what was demanded; had the case been less desperate than it appeared, there would have been reason to expect that these also would have been more urged. In fact Sir the sum received, 20,000 guilders was paid by this government in consideration of a discharge from all claim on account of Cargo, injuries & damages of all sorts. This discharge I gave before the money was touched by the Bankers, or rather the paper which I sent to our bankers of the 19. Jany last, to be presented to the Committee of the Colonies, was such discharge—: The government having previously ordered that committee to pay on the delivery of such a paper. Without this discharge I should not have got anything;—you will see Sir part of the motives which led me to agree to accept this sum; & to agree to give such a discharge, in N° 108—& 110—115 This discharge will be useful to this government, who, by it, will probably recover of the captors, at least a part of the sum which it has paid. By this discharge, the rights of suit, & *all* claims resulting from the capture, are transferred from all the parties injured to this government. On this principle, in addition to others which arise from the nature of the case, I consider Mr Condy as entitled to a very large dividend. With respect to the manner in which the dividend is to be made, & where, I am not to decide, I presume. I would suggest that the Secretary of the Treasury consider the 20,000 guilders which the Bankers have in hand, as so much to the credit of the U.S.;—and that the dividend be made in the U.S.—as the exchange could be easily settled between dollars there & guilders here.

Condy & Company were indebted to one Thomas Doughty, also of Charleston; a transfer of the claim (mentioning "Freight, Demurrage, Damages Charges and Expences"), as security for the debt, had been made by the Condy firm to Doughty on April 19, 1797. In a letter to the Secretary of State dated May 1801, Doughty referred to the assignment of the claim to him and said that Condy would explain every particular of the business; the letter includes these passages:

It seems this Cargo was the property of Aliens, but in fact shipped by, and in the name of the Captain—and Messrs Jeremiah Condy & Co'^{s} Claim which I represent, is for freight demurrage damages and Interest, and I wish to have these

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Satisfied. . . . I cannot see why there shou'd any delay take place for Strangers who have never applied, who are unknown, and who have never claimed any Indemnification whatever to the prejudice of a Citizen, in Consequence of whose claim and injury the money has been recovered.

According to a letter of Doughty of September 11, 1801, the Secretary of State (James Madison) wrote to him on June 10: "I shall consent to give an order to the Bankers at Amsterdam to pay it to those who have right, if this will be acceptable to you, or I will draw the money to this Country, and place it in the Bank of the United States, for the same purpose, if you prefer that course". Doughty asked that the fund be brought home; this was done; the amount realized from the 20,000 guilders was $8,200; this sum was deposited in the Bank of the United States, and there it remained for nearly ten years, when it was transferred to the Bank of Columbia to the credit of the Secretary of State for the time being, subject to his order, for the benefit of Jeremiah Condy & Company and others interested in the *Wilmington Packet* (D.S., Miscellaneous Letters, May–July 1813, receipt dated May 17, 1811).

The reasons for the prolonged delay in the distribution of the fund are not of record; no demand on behalf of the cargo owners, other than as stated above, appears; they received nothing; the whole fund finally went to Condy; pursuant to drafts of his in 1811 and 1813, the $8,200 was paid over to the Treasury in satisfaction of obligations of Condy to the United States, the interest of Doughty having been relinquished (*ibid.*, draft for $2,976, paid June 28, 1811; draft dated May 12, 1813, for $5,024; draft dated June 28, 1813, for $200; relinquishment of all claim by Thomas Doughty, dated May 12, 1813; draft of the Secretary of State in favor of the Treasurer of the United States for $5,224, dated July 6, 1813; letter of Condy to the Secretary of State, dated May 15, 1813).

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